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Letter dated 5 January 2004 from the Permanent Representative of Honduras to the United Nations addressed to the President of the Security Council

On instructions from my Government, I have the honour to transmit the Application for the revision of the Judgment of 11 September 1992 in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (El Salvador v. Honduras)* dated 18 September 2003.

I request you to have it circulated as a document of the Security Council, and attach an original copy in English of the Judgment of the International Court of Justice (see annex).

(*Signed*) Manuel **Acosta Bonilla**
Ambassador
Permanent Representative

04-21358 (E) 030204 050204

Annex to the letter dated 5 January 2004 from the Permanent Representative of Honduras to the United Nations addressed to the President of the Security Council

[Original: French and English]

INTERNATIONAL COURT OF JUSTICE

YEAR 2003

2003
18 December
General List
No. 127

18 December 2003

APPLICATION FOR REVISION OF THE JUDGMENT OF 11 SEPTEMBER 1992 IN THE CASE CONCERNING THE *LAND, ISLAND AND MARITIME FRONTIER DISPUTE (EL SALVADOR/HONDURAS: NICARAGUA INTERVENING)*

(EL SALVADOR *v.* HONDURAS)

Article 61 of the Statute — Application for revision — Possibility for the Court at any time to require previous compliance with the terms of the judgment whose revision is sought, before it admits proceedings in revision — No role played by the consent of the parties as to admissibility of an application for revision.

New facts alleged by El Salvador in respect of the sixth sector of the land boundary between El Salvador and Honduras established in the Chamber's Judgment of 11 September 1992: avulsion of the river Goascorán; discovery of a further copy of the "Carta Esférica" and of the report of the El Activo *expedition in 1794 — Legal basis of the Chamber's decision in the original case — Alleged new facts not decisive factors in respect of the 1992 Judgment — No need to ascertain whether the other conditions laid down in Article 61 of the Statute are satisfied — Inadmissibility of the Application.*

JUDGMENT

Present: *Judge* GUILLAUME, *President of the Chamber*; *Judges* REZEK, BUERGENTHAL; *Judges* ad hoc TORRES BERNÁRDEZ, PAOLILLO; *Registrar* COUVREUR.

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* This annexed application is rendered by the Court in English and French only.

In the case concerning the Application for revision of the Judgment of 11 September 1992,

between

the Republic of El Salvador,

represented by

Mr. Gabriel Mauricio Gutiérrez Castro,

as Agent;

H.E. Ms María Eugenia Brizuela de Ávila, Minister for Foreign Affairs,

H.E. Mr. Rafael Zaldívar Brizuela, Ambassador of El Salvador to the International Organizations in The Hague,

as Co-Agents;

Mr. Augustín Vásquez Gómez,

as Deputy Agent;

Mr. Antonio Remiro Brotóns, Professor of International Law, Universidad Autónoma de Madrid,

Mr. Maurice Mendelson, Q.C., Professor Emeritus of International Law, University of London,

as Counsel and Advocates;

Mr. Mauricio Alfredo Clará,

Mr. Domingo E. Acevedo,

as Counsel;

Ms Beatriz Borja de Miguel,

Ms Patricia Kennedy,

Ms Ana Mogorrón Huerta,

as Advisers;

Mr. César Martínez,

Ms Lilian Overdiek,

Ms Cecilia Montoya de Guardado,

as Assistants;

and

the Republic of Honduras,

represented by

H.E. Mr. Carlos López Contreras, former Minister for Foreign Affairs,

as Agent;

H.E. Mr. Julio Rendón Barnica, Ambassador of Honduras to the Netherlands,

as Co-Agent;

Mr. Pierre-Marie Dupuy, Professor of International Law, Université de Paris (Panthéon-Assas) and Institut universitaire européen de Florence,

Mr. Luis Ignacio Sánchez Rodríguez, Professor of International Law, Universidad Complutense de Madrid,

Mr. Philippe Sands, Q.C., Professor of Law, University College London,

Mr. Carlos Jiménez Piernas, Professor of International Law, Universidad de Alcalá, Madrid,

Mr. Richard Meese, avocat à la cour d'appel de Paris,

as Counsel and Advocates;

H.E. Mr. Aníbal Quiñónez Abarca, Deputy Minister for Foreign Affairs,

H.E. Mr. Policarpo Callejas, Ambassador, Adviser to the Ministry of Foreign Affairs,

Mr. Miguel Tosta Appel, Chairman of the Honduran National Section of the El Salvador-Honduras Demarcation Commission,

as Counsel,

THE CHAMBER OF THE INTERNATIONAL COURT OF JUSTICE formed to deal with the above-mentioned case,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 10 September 2002 the Republic of El Salvador (hereinafter "El Salvador") filed in the Registry of the Court an Application instituting proceedings dated the same day, whereby, citing Article 61 of the Statute and Articles 99 and 100 of the Rules of Court, it submitted a request to the

Court for revision of the Judgment delivered on 11 September 1992 by the Chamber of the Court formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* (*I.C.J. Reports 1992*, p. 351).

2. Pursuant to Article 40, paragraph 2, of the Statute, the Registrar communicated a certified copy of the Application to the Republic of Honduras (hereinafter "Honduras") on 10 September 2002. A copy of the Application was also communicated to the Republic of Nicaragua for information purposes, since that State had been authorized, pursuant to Article 62 of the Statute, to intervene in the original proceedings. In accordance with Article 40, paragraph 3, of the Statute, all States entitled to appear before the Court were notified of the Application.

3. In its Application, El Salvador, citing Article 100, paragraph 1, of the Rules of Court, requested the Court "To proceed to form the Chamber that will hear the application for revision of the Judgment, bearing in mind the terms that El Salvador and Honduras agreed upon in the Special Agreement of 24 May 1986."

4. The Parties, duly consulted by the President of the Court on 6 November 2002, expressed their wish for the formation of a new chamber of five members, of whom two would be judges *ad hoc* to be chosen by them pursuant to Article 31, paragraph 3, of the Statute. By a letter of 7 November 2002 the Agent of El Salvador informed the Court that his Government had chosen H.E. Mr. Felipe H. Paolillo to sit as judge *ad hoc*; and by a letter of 18 November 2002 the Agent of Honduras informed the Court that his Government had chosen Mr. Santiago Torres Bernárdez to sit as judge *ad hoc*.

5. By an Order of 27 November 2002 the Court, acting pursuant to Article 26, paragraph 2, of the Statute and Article 17 of the Rules of Court, decided to accede to the request of the Parties that a special chamber be formed to deal with the case; it declared that, at an election held on 26 November 2002, President Guillaume and Judges Rezek and Buergenthal had been elected to form a chamber to deal with the case, together with the above-named judges *ad hoc*, stating further that the said chamber as so composed had accordingly been duly constituted pursuant to that Order. In accordance with Article 18, paragraph 2, of the Rules of Court, Judge Guillaume, who held the office of President of the Court when the Chamber was formed, was to preside over the Chamber.

6. By the same Order, the Court, acting pursuant to Articles 92, paragraph 2, and 99, paragraph 2, of the Rules of Court, fixed 1 April 2003 as the time-limit for the filing of Written Observations by Honduras on the admissibility of the Application, and reserved the subsequent procedure for further decision.

7. On 1 April 2003, within the time-limit fixed, Honduras filed in the Registry its Written Observations on the admissibility of El Salvador's Application.

8. In a letter of 8 April 2003 the Agent of El Salvador, referring to the Written Observations of Honduras, contended that the latter had submitted new documents with corresponding arguments, and that these required a response from El Salvador, accompanied by the necessary

documents, and to that end requested authorization for his Government to submit new documents. In a letter of 24 April 2003 the Co-Agent of Honduras opposed that request. Following a meeting held by the President of the Chamber with the Parties' Agents on 28 April 2003, the Chamber decided that the filing of additional written pleadings was not necessary in the circumstances, that the written proceedings were accordingly closed, and that, if El Salvador wished to submit new documents, its request would then be considered in accordance with the procedure laid down in Article 56 of the Rules of Court. The Registrar advised the Parties of this decision by letters dated 8 May 2003.

9. By a letter of 23 June 2003 El Salvador sought authorization to produce new documents pursuant to Article 56 of the Rules of Court. Those documents, having been filed in the Registry that same day, were transmitted to Honduras in accordance with paragraph 1 of that Article. By a letter of 10 July 2003 Honduras informed the Chamber that it objected to the production of those documents. El Salvador and Honduras were authorized to submit further observations on the matter, which they did by letters of 17 and 24 July 2003 respectively. After examining the views thus expressed by the Parties, the Chamber decided, in accordance with Article 56, paragraph 2, of the Rules of Court, to authorize the production of only some of the documents submitted by El Salvador. The Chamber further noted that a new document attached by Honduras to its Observations of 10 July 2003 was admissible only if authorized pursuant to the same provision of the Rules, and decided not to authorize its production. By letters of 29 July 2003, the Deputy-Registrar informed the Parties of these decisions, advising them that, pursuant to Article 56, paragraph 3, Honduras was authorized to comment by not later than 19 August 2003 on the documents which the Chamber had authorized El Salvador to produce, and to submit documents in support of its comments. On 19 August 2003, within the time-limit thus fixed, Honduras filed its comments in the Registry together with four supporting documents.

10. Pursuant to Article 53, paragraph 2, of the Rules of Court, the Chamber, having ascertained the views of the Parties, decided to make accessible to the public, with effect from the opening of the oral proceedings, copies of Honduras's Written Observations on the admissibility of El Salvador's Application and of the documents annexed to those Observations, together with all new documents subsequently produced by the Parties with the Chamber's authorization.

11. Public sittings were held on 8, 9, 10 and 12 September 2003, at which the Chamber heard the oral arguments and replies of:

For El Salvador: H.E. Ms María Eugenia Brizuela de Ávila,
Mr. Maurice Mendelson,
Mr. Antonio Remiro Brotóns,
Mr. Gabriel Mauricio Gutiérrez Castro.

For Honduras: H.E. Mr. Carlos López Contreras,
Mr. Pierre-Marie Dupuy,
Mr. Carlos Jiménez Piernas,
Mr. Richard Meese,
Mr. Luis Ignacio Sánchez Rodríguez,
Mr. Philippe Sands.

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12. In its Application, El Salvador made the following requests:

"For all the foregoing reasons, the Republic of El Salvador requests the Court:

(a) To proceed to form the Chamber that will hear the application for revision of the Judgment, bearing in mind the terms that El Salvador and Honduras agreed upon in the Special Agreement of 24 May 1986;

(b) To declare the application of the Republic of El Salvador admissible on the grounds of the existence of new facts of such a character as to lay the case open to revision under Article 61 of the Statute of the Court; and

(c) Once the application is admitted, to proceed to the revision of the Judgment of 11 September 1992, so that a new Judgment will determine the boundary line in the sixth disputed sector of the land frontier between El Salvador and Honduras to be as follows:

> 'Starting from the old mouth of the Goascorán river in the inlet known as the La Cutú Estuary situated at latitude 13° 22' 00" N and longitude 87° 41' 25" W, the frontier follows the old course of the Goascorán river for a distance of 17,300 meters as far as the place known as the Rompición de los Amates situated at latitude 13° 26' 29" N and longitude 87° 43' 25" W, which is where the Goascorán river changed its course.'."

13. In its Written Observations, Honduras made the following submission:

"In view of the facts and arguments presented above, the Government of the Republic of Honduras requests the Chamber to declare inadmissible the Application for revision presented on 10 September 2002 by El Salvador."

14. At the oral proceedings, the following final submissions were presented by the Parties:

On behalf of the Government of the Republic of El Salvador,

"The Republic of El Salvador respectfully requests the Chamber, rejecting all contrary claims and submissions to adjudge and declare that:

1. The application of the Republic of El Salvador is admissible based on the existence of new facts of such a nature as to leave the case open to revision, pursuant to Article 61 of the Statute of the Court, and

2. Once the request is admitted that it proceed to a revision of the Judgment of 11 September 1992, so that a new judgment fixes the boundary line in the sixth disputed sector of the land boundary between El Salvador and Honduras as follows:

> 'Starting at the old mouth of the Goascorán River at the entry point known as the Estero de la Cutú, located at latitude 13 degrees 22 minutes 00 seconds north and longitude 87 degrees 41 minutes 25 seconds west, the border follows the old bed of the Goascorán River for a distance of 17,300 metres up to the place known as Rompición de Los Amates, located at latitude 13 degrees 26 minutes 29 seconds north and longitude 87 degrees 43 minutes 25 seconds west, which is where the Goascorán River changed course.'."

On behalf of the Government of the Republic of Honduras,

"In view of the facts and arguments presented above, the Government of the Republic of Honduras requests the Chamber to declare the inadmissibility of the Application for Revision presented on 10 September 2002 by El Salvador."

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* *

15. By a Judgment of 11 September 1992, the Chamber of the Court formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* decided the course of the land boundary between El Salvador and Honduras in six disputed sectors of that boundary. By the same Judgment the Chamber settled the dispute between the Parties over the legal status of various islands in the Gulf of Fonseca and the legal status of waters in the Gulf and outside it.

16. El Salvador has submitted an Application to the Court for revision of the 1992 Judgment in respect of the sixth sector of the land boundary, lying between Los Amates and the Gulf of Fonseca. During the original proceedings, it was the contention of Honduras that in that sector "the boundary . . . follows the present stream [of the River Goascorán], flowing into the Gulf north-west

of the Islas Ramaditas in the Bay of La Unión". El Salvador however claimed that the boundary was defined by "a previous course followed by the river . . . and that this course, since abandoned by the stream, can be traced, and it reaches the Gulf at Estero La Cutú" (Judgment, para. 306). In the Judgment revision of which is now sought, the Chamber unanimously upheld the submissions of Honduras (*ibid.*, paras. 321, 322 and 430).

17. In its Application for revision of the 1992 Judgment, El Salvador relies on Article 61 of the Statute, which provides:

> "1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.
>
> 2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.
>
> 3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.
>
> 4. The application for revision must be made at latest within six months of the discovery of the new fact.
>
> 5. No application for revision may be made after the lapse of ten years from the date of the judgment."

18. Article 61 provides for revision proceedings to open with a judgment of the Court declaring the application admissible on the grounds contemplated by the Statute; Article 99 of the Rules of Court makes express provision for proceedings on the merits if, in its first judgment, the Court has declared the application admissible.

Thus the Statute and the Rules of Court foresee a "two-stage procedure". The first stage of the procedure for a request for revision of the Court's judgment should be "limited to the question of admissibility of that request" (*Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1985*, p. 197, paras. 8 and 10; *Application for Revision of the Judgment of 11 July 1996 in the Case concerning* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia), Preliminary Objections *(Yugoslavia* v. *Bosnia and Herzegovina), Judgment,* 3 February 2003, para. 15).

19. Therefore, at this stage, the present Chamber's decision is limited to the question whether El Salvador's request satisfies the conditions contemplated by the Statute. Under Article 61, these conditions are as follows:

(a) the application should be based upon the "discovery" of a "fact";

(b) the fact the discovery of which is relied on must be "of such a nature as to be a decisive factor";

(c) the fact should have been "unknown" to the Court and to the party claiming revision when the judgment was given;

(d) ignorance of this fact must not be "due to negligence"; and

(e) the application for revision must be "made at latest within six months of the discovery of the new fact" and before ten years have elapsed from the date of the judgment.

20. The Chamber observes lastly that "an application for revision is admissible only if each of the conditions laid down in Article 61 is satisfied. If any one of them is not met, the application must be dismissed." (*Application for Revision of the Judgment of 11 July 1996 in the Case concerning* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia), Preliminary Objections *(Yugoslavia* v. *Bosnia and Herzegovina), Judgment,* 3 February 2003, para. 17.)

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21. However, El Salvador appears to argue *in limine* that there is no need for the Chamber to consider whether the conditions of Article 61 of the Statute have been satisfied. According to the Applicant,

> "Honduras implicitly acknowledged the admissibility of El Salvador's Application when, by letter dated 29 October 2002, it informed the distinguished President of the Court that, pursuant to Article 61, paragraph 3, of the Statute, it would ask that the Court require previous compliance with the 1992 Judgment as a condition precedent to the admissibility of the Application for revision."

In El Salvador's view, "The back step that Honduras took with its letter of 24 July 2003", by which it decided not to ask for prior compliance with the judgment, "does nothing to diminish [the] acknowledgment [of the admissibility of the Application], and instead serves to confirm it". The Chamber is consequently requested to "adjudge and decide accordingly".

22. The Chamber observes first that, in its letter of 29 October 2002, Honduras informed the President of the Court that it would "request that the Court make the admission of the proceedings in revision conditional on previous compliance with the judgment" and that accordingly it would "submit a formal petition" to that effect. However, Honduras never submitted that request and stated in its observations of 24 July 2003 (see paragraph 9 above) that it had "decided, on reflection, not to ask the Chamber to require prior compliance with the terms of the Judgment". Thus, Honduras's conduct cannot be construed as implying a tacit acceptance of the admissibility of El Salvador's Application for revision.

Further, paragraph 3 of Article 61 of the Statute and paragraph 5 of Article 99 of the Rules of Court afford the Court the possibility at any time to require previous compliance with the terms of the judgment whose revision is sought, before it admits proceedings in revision; accordingly, even if Honduras had submitted a request to the Court to require previous compliance without awaiting the Chamber's decision on the admissibility of El Salvador's Application, the request would not have implied recognition of the admissibility of the Application.

Finally, the Chamber notes that, regardless of the parties' views on the admissibility of an application for revision, it is in any event for the Court, when seised of such an application, to ascertain whether the admissibility requirements laid down in Article 61 of the Statute have been met. Revision is not available simply by consent of the parties, but solely when the conditions of Article 61 are met.

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23. In order properly to understand El Salvador's present contentions, it is necessary to recapitulate at the outset part of the reasoning in the 1992 Judgment in respect of the sixth sector of the land boundary.

El Salvador admitted before the Chamber hearing the original case that the river Goascorán had been adopted as the provincial boundary during the period of Spanish colonization. It argued, however, that

> "at some date [the Goascorán] abruptly changed its course to its present position. On this basis El Salvador's argument of law [was] that where a boundary is formed by the course of a river, and the stream suddenly leaves its old bed and forms a new one, this process of 'avulsion' does not bring about a change in the boundary, which continues to follow the old channel." (Para. 308.)

That was claimed to be the rule under both Spanish colonial law and international law. Thus, according to El Salvador, the boundary between the two States should be established not along the present stream of the river, flowing into the Bay of La Unión, but along the "previous course . . . since abandoned by the stream", probably during the seventeenth century, emptying into the Estero La Cutú (paras. 306 and 311).

24. After setting out this argument by El Salvador, the Chamber stated in its Judgment of 11 September 1992 that "No record of such an abrupt change of course having occurred has been brought to the Chamber's attention" (para. 308). It added: "were the Chamber satisfied that the river's course was earlier so radically different from its present one, then an avulsion might reasonably be inferred" (para. 308). The Chamber observed, however, that: "There is no scientific evidence that the previous course of the Goascorán was such that it debouched in the Estero La Cutú" or in another neighbouring inlet (para. 309). It did not take a position on the consequences that any avulsion, occurring before or after 1821, would have had on provincial boundaries, or boundaries between States, under Spanish colonial law or international law.

The Chamber went on to find that "any claim by El Salvador that the boundary follows an old course of the river abandoned at some time *before* 1821 must be rejected. It is a new claim and inconsistent with the previous history of the dispute." (Para. 312.) In this regard, the Chamber noted *inter alia* that on several occasions, including in particular during the Saco negotiations between the two States in 1880, El Salvador had adopted conduct excluding any "claim . . . that the 1821 boundary was not the 1821 course of the river, but an older course, preserved as provincial boundary by a provision of colonial law" (para. 312).

The Chamber then considered "the evidence made available to it concerning the course of the river Goascorán in 1821" (para. 313). It examined in particular a "chart (described as a 'Carta Esférica') of the Gulf of Fonseca prepared by the captain and navigators of the brig or brigantine *El Activo*, who sailed in 1794, on the instructions of the Viceroy of Mexico, to survey the Gulf" (para. 314). It noted that the mouth of the Goascorán on that chart was "quite inconsistent with the old course of the river alleged by El Salvador, or, indeed, any course other than the present-day one" (para. 314). The Chamber concluded that "the report of the 1794 expedition and the 'Carta Esférica' leave little room for doubt that the river Goascorán in 1821 was already flowing in its present-day course" (para. 316).

Finally, after having examined various other arguments by El Salvador which it is not necessary to repeat here, the Chamber "found that the boundary follows the present course of the Goascorán" (para. 319) and defined the boundary line in the mouth of the river (paras. 320-322).

* *

25. In its Application for revision, El Salvador, acting under Article 61 of the Statute, relies on facts which it considers to be new within the meaning of that Article; those facts relate, on the one hand, to the avulsion of the river Goascorán and, on the other, to the "Carta Esférica" and the report of the 1794 *El Activo* expedition.

* *

26. El Salvador first claims to possess scientific, technical and historical evidence showing, contrary to what it understands the decision of the Chamber to have been, that the Goascorán did in the past change its bed, and that the change was abrupt, probably as a result of a cyclone in 1762.

In support of this contention El Salvador submits to the Chamber a report dated 5 August 2002 entitled Geologic, Hydrologic and Historic Aspects of the Goascorán Delta — A Basis for Boundary Determination. It also produces a study it conducted in 2002 "to check for the presence of vestiges of the Goascorán's original riverbed and additional information about its hydrographic behaviour". Finally, it refers to various publications, including in particular *Geografía de Honduras* by Ulises Meza Cálix, published in 1916, and *Monografía del Departamento de Valle*, prepared under the direction of Bernardo Galindo y Galindo and published in 1934.

27. El Salvador argues that evidence can constitute "new facts" for purposes of Article 61 of the Statute. In this regard it relies on the *travaux préparatoires* of the provision of the Statute of the Permanent Court of International Justice, on which Article 61 is modelled, which are said to confirm that a document can be considered to be a "new fact". It also invokes an arbitral award handed down on 7 August and 25 September 1922 by the Franco-German Mixed Arbitral Tribunal in the *Heim et Chamant c. Etat allemand* case, which, in El Salvador's view, recognized that evidence can constitute "a fact".

El Salvador further contends that the evidence it is now offering establishes the existence of an old bed of the Goascorán debouching in the Estero La Cutú, and the avulsion of the river in the mid-eighteenth century or that at the very least, it justifies regarding such an avulsion as plausible. These are said to be "new facts" for purposes of Article 61.

28. The facts thus set out are, according to El Salvador, decisive. It maintains that the considerations and conclusions of the 1992 Judgment are founded on the rejection of an avulsion which, in the Chamber's view, had not been proved: that avulsion has ceased to be a matter of conjecture — it is an established fact which actually occurred. On the basis of Spanish colonial law, the provincial boundaries remained unchanged, notwithstanding the avulsion, until 1821. El Salvador concludes that, contrary to what the Chamber held in 1992, the boundary arising from the *uti possidetis juris* should accordingly follow those boundaries and not the new course of the Goascorán.

29. El Salvador finally maintains that, given all the circumstances of the case, in particular the "bitter civil war [which] was raging in El Salvador" "for virtually the whole period between 1980 and the handing down of the Judgment on 11 September 1992", its ignorance of the various new facts which it now advances concerning the course of the Goascorán was not due to negligence.

In particular, it states that the scientific and technical studies it has produced could not have been carried out previously, given both the state of science and technology in 1992, and the political situation prevailing at the time in the sixth sector of the boundary and, generally, in El Salvador and the region. As for the publications mentioned above (see paragraph 26), El Salvador contends that it could not have "access to the documents in Honduras's National Archives and, despite all its efforts, could not locate them in the archives of other States to which it did have access".

30. El Salvador concludes from the foregoing that, as the various conditions laid down by Article 61 of the Statute are satisfied, the Application for revision founded on the avulsion of the river Goascorán is admissible.

31. Honduras, for its part, argues that with regard to the application of Article 61 of the Statute, it is "well-established case law that there is a distinction in kind between the facts alleged and the evidence relied upon to prove them and that only the discovery of the former opens a right to revision". It quotes in this connection the Advisory Opinion rendered on 4 September 1924 by

the Permanent Court of International Justice concerning the question of the *Monastery of Saint-Naoum*. According to Honduras, a "fact" cannot "include evidentiary material in support of an argument, or an assertion, or an allegation". Accordingly, the evidence submitted by El Salvador cannot open a right to revision.

Honduras adds that El Salvador has not demonstrated the existence of a new fact discovered by El Salvador since 1992 "which establishes that the Goascorán River previously ran in a former bed which debouched at Estero La Cutú or that a process of 'avulsion' occurred, or that it occurred on a particular date". In reality, El Salvador is seeking "a new interpretation of previously known facts" and asking the Chamber for a "genuine reversal" of the 1992 Judgment.

32. Honduras further maintains that the facts relied on by El Salvador, even if assumed to be new and established, are not of such a nature as to be decisive factors in respect of the 1992 Judgment. According to Honduras, "the material presented by El Salvador on that subject is irrelevant to the operative factual determination" made at that time by the Chamber. That decision is alleged to have been founded solely on the finding of fact that "from 1880, during the Saco negotiations, until 1972 El Salvador had treated the boundary as being based on the 1821 course of the river". The Chamber is said to have acted on that basis alone when in paragraph 312 of its Judgment it rejected El Salvador's claim "that the boundary follows an old course of the river abandoned at some time *before* 1821", considering it to be "a new claim and inconsistent with the previous history of the dispute". Thus, according to Honduras, it does not matter whether or not there was avulsion: avulsion is irrelevant to the *ratio decidendi* of the Chamber.

33. Honduras argues lastly that El Salvador's ignorance in 1992 of the facts on which it is relying in the present proceedings in support of its theory of avulsion was due to negligence. El Salvador has "never proved that it exhausted — or even initiated — means that would have given it diligent knowledge of the facts that it is alleging today". In Honduras's view, El Salvador could have had the scientific and technical studies and historical research which it is now relying on carried out before 1992.

34. Honduras concludes from the foregoing that, as the various conditions laid down by Article 61 of the Statute have not been satisfied, the Application for revision founded on the avulsion of the river Goascorán is not admissible.

35. Finally, the Parties raise the question whether the Application for revision was properly made within the six-month time-limit stipulated in paragraph 4 of Article 61 of the Statute. They do acknowledge, however, that the Application was submitted within the ten-year time-limit provided for in paragraph 5 of that Article, specifically, one day before the expiry of that time-limit. Honduras maintains nevertheless that, by proceeding in this fashion, the Applicant showed procedural bad faith. That is denied by El Salvador.

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36. Turning to consideration of El Salvador's submissions concerning the avulsion of the Goascorán, the Chamber recalls that an application for revision is admissible only if each of the conditions laid down in Article 61 is satisfied, and that if any one of them is not met, the application must be dismissed; in the present case, the Chamber will begin by ascertaining whether the alleged facts, supposing them to be new facts, are of such a nature as to be decisive factors in respect of the 1992 Judgment.

37. In this regard, it is appropriate first to recall the considerations of principle on which the Chamber hearing the original case relied for its ruling on the disputes between the two States in six sectors of their land boundary.

According to that Chamber, the boundary was to be determined "by the application of the principle generally accepted in Spanish America of the *uti possidetis juris*, whereby the boundaries were to follow the colonial administrative boundaries" (para. 28). The Chamber did however note that "the *uti possidetis juris* position can be qualified by adjudication and by treaty". It reasoned from this that "the question then arises whether it can be qualified in other ways, for example, by acquiescence or recognition". It concluded that "There seems to be no reason in principle why these factors should not operate, where there is sufficient evidence to show that the parties have in effect clearly accepted a variation, or at least an interpretation, of the *uti possidetis juris* position." (Para. 67.)

Applying these principles to the first sector of the land boundary, the Chamber considered that in this sector "The situation was susceptible of modification by acquiescence in the lengthy intervening period" since the early nineteenth century. It added that, whatever may have been the colonial administrative boundaries, "the conduct of Honduras from 1881 until 1972 may be regarded as amounting to such acquiescence" to a part of the boundary claimed by El Salvador in this sector (para. 80).

38. The Chamber proceeded similarly in paragraphs 306 to 322 of its Judgment in respect of the sixth sector. After having identified the object of the dispute in this sector in paragraph 306, the Chamber first observed "that during the colonial period a river called the Goascorán constituted the boundary between two administrative divisions of the Captaincy-General of Guatemala: the province of San Miguel and the Alcaldía Mayor de Minas of Tegucigalpa" (para. 307). The Parties were in agreement that El Salvador had succeeded in 1821 to the territory of the Province of San Miguel. On the other hand, they disagreed as to whether or not the Alcaldía Mayor of Tegucigalpa had passed to Honduras. The Chamber decided that point in favour of Honduras *(ibid.)*.

The Chamber then considered "The contention of El Salvador that a former bed of the river Goascorán forms the *uti possidetis juris* boundary." In this respect, it observed that:

> "[this contention] depends, as a question of fact, on the assertion that the Goascorán formerly was running in that bed, and that at some date it abruptly changed its course to its present position. On this basis El Salvador's argument of law is that where a

boundary is formed by the course of a river, and the stream suddenly leaves its old bed and forms a new one, this process of 'avulsion' does not bring about a change in the boundary, which continues to follow the old channel." (Para. 308.)

The Chamber added that:

"No record of such an abrupt change of course having occurred has been brought to the Chamber's attention, but were the Chamber satisfied that the river's course was earlier so radically different from its present one, then an avulsion might reasonably be inferred." *(Ibid.)*

Pursuing its consideration of El Salvador's argument, the Chamber did however note: "There is no scientific evidence that the previous course of the Goascorán was such that it debouched in the Estero La Cutú . . . rather than in any of the other neighbouring inlets in the coastline, such as the Estero El Coyol." (Para. 309.)

Turning to consideration as a matter of law of El Salvador's proposition concerning the avulsion of the Goascorán, the Chamber observed that El Salvador "suggests . . . that the change in fact took place in the 17th century" (para. 311). It concluded that "On this basis, what international law may have to say, on the question of the shifting of rivers which form frontiers, becomes irrelevant: the problem is mainly one of Spanish colonial law." (Para. 311.)

At the conclusion of its consideration of El Salvador's line of argument as to the avulsion of the Goascorán, the Chamber did not take any position on the existence of an earlier course of the Goascorán which might have debouched into the Estero La Cutú, or on any avulsion of the river, nor *a fortiori*, on the date of any such avulsion or its legal consequences. It confined itself to defining the framework in which it could possibly have taken a position on these various points.

39. Beginning in paragraph 312 of the Judgment, the Chamber turned to a consideration of a different ground. At the outset, it tersely stated the conclusions which it had reached and then set out the reasoning supporting them. In the view of the Chamber, "any claim by El Salvador that the boundary follows an old course of the river abandoned at some time *before* 1821 must be rejected. It is a new claim and inconsistent with the previous history of the dispute." (Para. 312.)

The Chamber then noted: "A specific assertion that the boundary should follow an abandoned course of the river Goascorán was first made during the Antigua negotiations in 1972" (para. 312). It also quoted an excerpt from the record of the negotiations between the two States at Saco in 1880, stating that the two delegates had agreed "to recognize" the river Goascorán "as the frontier between the two Republics, from its mouth in the Gulf of Fonseca, Bay of La Unión, upstream in a north-easterly direction . . ." *(ibid.)*. The Chamber observed that to interpret "the words 'River Goascorán' [in the text] as meaning a Spanish colonial boundary which in 1821 followed a long-abandoned course of the river, is out of the question" *(ibid.)*. It added that similar considerations applied to the circumstances of further negotiations in 1884 (para. 317).

Having on these grounds arrived at the conclusion that the boundary in 1821 followed the course of the Goascorán at that date, the Chamber turned to consideration of the evidence submitted to it in respect of that course (paras. 313 *et seq.*), evidence which will be examined in due course (see paragraph 50 below).

40. It is apparent from this discussion that, while the Chamber in 1992 rejected El Salvador's claims that the 1821 boundary did not follow the course of the river at that date, it did so on the basis of that State's conduct during the nineteenth century. In other words, applying the general rule which it had enunciated in paragraph 67 of the Judgment, the Chamber proceeded, in paragraph 312, concerning the sixth sector of the land boundary, by employing reasoning analogous to that which it had adopted in paragraph 80 in respect of the first sector. In the sixth sector, this reasoning led the Chamber to uphold the submissions of Honduras, while in the first sector it had proved favourable to El Salvador's position.

In short, it does not matter whether or not there was an avulsion of the Goascorán. Even if avulsion were now proved, and even if its legal consequences were those inferred by El Salvador, findings to that effect would provide no basis for calling into question the decision taken by the Chamber in 1992 on wholly different grounds. The facts asserted in this connection by El Salvador are not "decisive factors" in respect of the Judgment which it seeks to have revised. In light of the 1992 Judgment, the Chamber cannot but reach such a conclusion, independently of the positions taken by the Parties on this point in the course of the present proceedings.

* *

41. In support of its Application for revision, El Salvador relies on a second "new fact", that is, the discovery in the Ayer Collection of the Newberry Library in Chicago of a further copy of the "Carta Esférica" and of a further copy of the report of the expedition of the *El Activo*, thereby supplementing the copies from the Madrid Naval Museum to which the Chamber made reference in paragraphs 314 and 316 of its Judgment (see paragraph 24 above).

El Salvador states that in 1992, the Chamber had before it only copies of the documents that had been obtained from Madrid, and been produced by Honduras. It contends that it was on the basis of those copies that the Chamber decided the "point at which the Goascorán emptied into the Gulf" and the course of the boundary.

According to El Salvador, the documents discovered in Chicago differ from those in Madrid on several significant points. It maintains that:

> "The fact that there are several versions of the 'Carta Esférica' and the Report of the Gulf of Fonseca from the *El Activo* expedition, that there are differences among them and the anachronisms they share, compromises the evidentiary value that the Chamber attached to the documents that Honduras presented, essential in the Judgment [of 1992]."

Further, the evidentiary value is claimed to be all the more doubtful in that the Madrid documents enjoyed no official status and have not been certified to be originals. Accordingly, maintains El Salvador, there exists "a second *new fact*, whose implications for the Judgment have to be considered once the application for revision is admitted".

42. El Salvador adds that "[t]he discovery of hitherto unknown documents is a typical example of the type of fact which lays a case open to revision . . . either because they themselves constitute the *factum* or because they are the source of knowledge of them". It further states that "[e]vidence which rebuts a fact established by a judgment of which revision is sought undoubtedly constitutes a *fact* for purposes of Article 61 of the Statute".

El Salvador asserts that in the present case the fact in question pre-dated the 1992 Judgment but was not "known at the time the Judgment was given". Thus, it is a "new fact" for purposes of Article 61. It is said to be decisive because its discovery has highlighted "the insubstantiality of the Madrid Naval Museum documents" from which the Chamber inferred "such significant" geographical "consequences".

43. Lastly, El Salvador states that the Ayer Collection is "not an indispensable reference source" and that the *El Activo* expedition was not a well-known expedition. It refers in more general terms to the "bitter civil war [which] was raging in El Salvador" "for virtually the whole period between 1980 and the handing down of the Judgment on 11 September 1992". Accordingly, it argues, "El Salvador's ignorance until 2002 of the existence of copies of the *El Activo* documents in collections situated in out-of-the-way places cannot be characterized as 'negligent'".

44. El Salvador concludes from the foregoing that, as the various conditions laid down by Article 61 of the Statute are satisfied, the Application for revision founded on the discovery of the new chart and new report is admissible.

45. For its part, Honduras denies that the production of the documents found in Chicago can be characterized as a new fact. This is simply "another copy of one and the same document already submitted by Honduras during the written stage of the case decided in 1992, and already evaluated by the Chamber in its Judgment". Honduras adds that it "never sought to argue the point whether the spherical chart was an original document (it always spoke of copies) or an official document". But it contends that there are no discrepancies between the three copies of the chart, merely "insignificant differences". Honduras maintains that those differences in no way contradict the content of the logbook. Finally, it notes that all three charts place the mouth of the river Goascorán in its present-day position, a finding on which the 1992 Judgment was based and which in any event remains valid.

46. Honduras further states that the new documents produced by El Salvador were part of a prestigious public collection and have been included in the Newberry Library catalogue at least since 1927. It concludes from this that El Salvador could easily have learned of those documents,

and that it breached its duty of diligence in failing to seek them out or produce them before 1992. According to Honduras, no excuse for this failure can be found in the internal conflict prevailing in El Salvador at the time, as that conflict in no way prevented the conduct of research outside the national territory.

47. Honduras concludes from the foregoing that, as the various conditions laid down by Article 61 of the Statute are not satisfied, the Application for revision founded on the discovery of the new chart and the new report is not admissible.

48. Finally, as regards the conditions laid down in paragraphs 4 and 5 of Article 61 of the Statute, the Parties put forward arguments similar to those they made in respect of the avulsion of the Goascorán (see paragraph 35 above).

*

49. The Chamber will proceed, as it did in respect of the avulsion (see paragraph 36 above), to determine first whether the alleged facts concerning the "Carta Esférica" and the report of the *El Activo* expedition are of such a nature as to be decisive factors in respect of the 1992 Judgment.

50. It should be recalled in this regard that the Chamber in 1992, after having held El Salvador's claims concerning the old course of the Goascorán to be inconsistent with the previous history of the dispute, considered "the evidence made available to it concerning the course of the river Goascorán in 1821" (para. 313). It paid particular attention to the chart prepared by the captain and navigators of the vessel *El Activo* around 1796, described as a "Carta Esférica", which Honduras had found in the archives of the Madrid Naval Museum. It noted that the chart

> "appears to correspond with considerable accuracy to the topography as shown on modern maps. It shows the 'Estero Cutú' in the same position as modern maps; and it also shows a river mouth, marked 'R° Goascoran', at the point where the river Goascorán today flows into the Gulf. Since the chart is one of the Gulf, presumably for navigational purposes, no features inland are shown except the '... best known volcanoes and peaks ...' ('... *volcanes y cerros mas conocidos* ...'), visible to mariners; accordingly, no course of the river upstream of its mouth is indicated. Nevertheless, the position of the mouth is quite inconsistent with the old course of the river alleged by El Salvador, or, indeed, any course other than the present-day one. In

> two places, the chart indicates the old and new mouths of a river (e.g., 'Barra vieja del Rio Nacaume' and 'Nuevo Rio de Nacaume'); since no ancient mouth is shown for the Goascorán, this suggests that in 1796 it had for some considerable time flowed into the Gulf where indicated on the chart." (Para. 314.)

The Chamber then analysed the report of the expedition and observed that it also places "the mouth of the river Goascorán at its present-day position" *(ibid.)*.

The Chamber concluded from the foregoing "that the report of the 1794 expedition and the 'Carta Esférica' leave little room for doubt that the river Goascorán in 1821 was already flowing in its present-day course" (para. 316).

51. The Judgment rendered by the Chamber in 1992 is thus based upon certain information conveyed by the "Carta Esférica" and the report of the *El Activo* expedition, in the versions held in Madrid. It should therefore be determined whether the Chamber might have reached different conclusions in 1992 had it also had before it the versions of those documents from Chicago.

52. The Chamber observes in this connection, that the two copies of the "Carta Esférica" held in Madrid and the copy from Chicago differ only as to certain details, such as for example, the placing of titles, the legends, and the handwriting. These differences reflect the conditions under which documents of this type were prepared in the late eighteenth century; they afford no basis for questioning the reliability of the charts that were produced to the Chamber in 1992.

53. The Chamber notes further that the Estero La Cutú and the mouth of the Río Goascorán are shown on the copy from Chicago, just as on the copies from Madrid, at their present-day location. The new chart produced by El Salvador thus does not overturn the conclusions arrived at by the Chamber in 1992; it bears them out.

54. As for the new version of the report of the *El Activo* expedition found in Chicago, it differs from the Madrid version only in terms of certain details, such as the opening and closing indications, spelling, and placing of accents. The body of the text is the same, in particular in the identification of the mouth of the Goascorán. Here again, the new document produced by El Salvador bears out the conclusions reached by the Chamber in 1992.

55. The Chamber concludes from the foregoing that the new facts alleged by El Salvador in respect of the "Carta Esférica" and the report of the *El Activo* expedition are not "decisive factors" in respect of the Judgment whose revision it seeks.

* *

56. Finally, El Salvador contends that proper contextualization of the alleged new facts "necessitates consideration of other facts that the Chamber weighed and that are now affected by the *new facts*". Moreover, El Salvador claims that

> "other evidences and proofs exist that, while not a *new fact*, were not taken up in the proceedings and are useful, even essential, whether to suppiement and confirm the *new facts* or to better understand them".

It cites the great eruption of Cosigüina volcano and the appearance of the Farallones del Cosigüina, the Saco negotiations between 1880 and 1984, and the characteristics of the lower reaches of the river Goascorán.

57. Honduras responds that El Salvador, by submitting for the Chamber's consideration "evidence additional to the alleged new facts", is acting "as though the Court had to ignore its previous reasoning, on the pretext that it is in the light of the context that the existence or non-existence of the alleged new facts falls to be assessed". In the view of Honduras, this approach would be tantamount to expanding "the restrictive list of elements in Article 61, paragraph 1, of the Court's Statute to unheard-of lengths, calculated to turn revision into a habitual method of appeal and to undermine the authority of *res judicata*".

58. The Chamber agrees with El Salvador's view that, in order to determine whether the alleged "new facts" concerning the avulsion of the Goascorán, the "Carta Esférica" and the report of the *El Activo* expedition fall within the provisions of Article 61 of the Statute, they should be placed in context, which the Chamber has done in paragraphs 23 to 55 above. However, the Chamber must recall that, under that Article, revision of a judgment can be opened only by "the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence". Thus, the Chamber cannot find admissible an Application for revision on the basis of facts which El Salvador itself does not allege to be new facts within the meaning of Article 61.

* *

59. Given the conclusions to which it has come in paragraphs 40, 55 and 58 above, it is not necessary for the Chamber to ascertain whether the other conditions laid down in Article 61 of the Statute are satisfied in the present case.

*

* *

60. For these reasons,

THE CHAMBER,

By four votes to one,

Finds that the Application submitted by the Republic of El Salvador for revision, under Article 61 of the Statute of the Court, of the Judgment given on 11 September 1992, by the Chamber of the Court formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, is inadmissible.

IN FAVOUR: Judge Guillaume, *President of the Chamber*; *Judges* Rezek, Buergenthal; *Judge* ad hoc Torres Bernárdez;

AGAINST: *Judge* ad hoc Paolillo.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this eighteenth day of December, two thousand and three, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of El Salvador and to the Government of the Republic of Honduras, respectively.

(Signed) Gilbert GUILLAUME,
President of the Chamber.

(Signed) Philippe COUVREUR,
Registrar.

Judge *ad hoc* PAOLILLO appends a dissenting opinion to the Judgment of the Chamber.

(Initialled) G. G.

(Initialled) Ph. C.

United Nations S/2004/10

Security Council

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9 January 2004

Original: English

Letter dated 9 January 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Switzerland to the United Nations addressed to the President of the Security Council

I have the honour to refer to the second report of the Monitoring Group established pursuant to Security Council resolution 1363 (2001) of 2 December 2003 (S/2003/1070). Upon instructions from my Government, I wish to make several comments, which are included in the attached annex.

Switzerland is fully committed to combating terrorism and has actively cooperated with the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities as well as with the Monitoring Group established pursuant to resolution 1363 (2001).

I would be extremely grateful if the present letter and its annex could be circulated as a document of the Security Council.

(*Signed*) Pierre **Helg**
Chargé d'affaires a.i.

04-20316 (E) 120104

Annex to the letter dated 9 January 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Switzerland to the United Nations addressed to the President of the Security Council

Comments of Switzerland on the second report of the Monitoring Group established pursuant to Security Council resolution 1363 (2001) (S/2003/1070)

1. Paragraphs 77 and 80

Investigations undertaken by the Swiss authorities in the summer of 2003 in real estate registry offices in the canton of Ticino have revealed that Mr. Youssef Nada, Mr. Ahmed Idris Nasreddin and the Nada Management Organization SA do not possess any real estate property in that canton. If any such real estate property had been found in the canton of Ticino or in any other canton, the Federal Council would have decided, on the basis of the Federal Constitution, that such property is frozen.

As far as commercial property is concerned, the Nada Management Organization SA, which had its headquarters in Lugano, Switzerland, has been in liquidation since December 2001. As the liquidation has almost been terminated, the headquarters of the company have been closed and the company has no more offices in Lugano. Investigations have shown that the Nada Management Organization SA does not possess any other commercial property in Switzerland.

2. Paragraph 78

Concerning the request of Waldenberg SA for the release of frozen assets, of which the Sanctions Committee was notified according to Security Council resolution 1452 (2002), the facts can be summarized as follows:

- In 1985, the applicant bought a real estate development in Campione d'Italia, Italy
- The Italian fiscal authorities levied taxes upon this transaction, but the value of the property, and thus the amount of the tax itself, was disputed. In 1987, the case was sent before an Italian fiscal court and the first judge's decision was appealed against by the Italian fiscal authorities. Until October 2001, the case was pending before an appellate court in Italy
- In 1990, a bank in Lugano issued a guarantee in favour of the applicant to cover possible claims by the Italian fiscal authorities in relation with the above-mentioned transaction. The provisions of the contract of guarantee included lawyers' expenses
- In October 2001 the Italian judicial authorities reached a final judgement setting the real value of the property, which was quite a bit higher than the initial value. In the light of this final judgement, the Italian fiscal authority claimed an additional tax liability on the real estate
- The legal proceedings in front of the Italian fiscal and judicial authorities induced lawyers' fees

The following elements in paragraph 78 therefore require correction:

- The bank issuing the bank guarantee is not the Bank of Lugano

- The origin of the expenses is not a tax litigation but fiscal taxes levied upon the acquisition of a real estate property by the applicant in Campione d'Italia, Italy
- The acquisition of the real estate took place in 1985, 14 years before the adoption of resolution 1267 (1999) and 16 years before Al Taqwa Trade Property and Industry Company Limited (now Waldenberg AG in liquidation) was included in the consolidated list of individuals, groups and undertakings and entities related to Usama bin Laden, Al-Qaida and the Taliban. The payments do therefore not stand in any relation with the sale of any assets as part of the liquidation of Al Taqwa

3. **Paragraph 101**

While Switzerland is not explicitly mentioned, one would assume that Mr. Nada would probably have had to pass through Switzerland when he travelled from Campione d'Italia, an Italian enclave surrounded by Swiss territory, to Liechtenstein. This could lead to the wrong impression that Swiss border control authorities are failing to implement the travel ban. This is not the case. Swiss border control authorities strictly implement the travel ban at all border control posts. However, for practical reasons and in conformity with international agreements concluded, there are no permanent border controls between Campione d'Italia and Switzerland nor between Switzerland and Liechtenstein.

4. **Paragraph 154**

In this paragraph the report speaks of "... limited weapons-smuggling taking place in Switzerland ...". This is a serious allegation, which gives the wrong impression that the Swiss authorities are not enforcing the arms embargo. Such a general allegation is unacceptable and has to be rejected. In September 2003, two members of the Monitoring Group visited Switzerland and did not raise this issue. Should the Monitoring Group have had indications of any such activity taking place, it would have been expected that the Group would have brought this to the attention of the Swiss authorities so that the necessary measures could be taken.

Switzerland reiterates its willingness to cooperate actively with the Security Council Committee established pursuant to resolution 1267 (1999) and the Monitoring Group established pursuant to Security Council resolution 1363 (2001). It regrets, however, that the Monitoring Group did not seek the necessary clarification on a number of issues contained in its report. Switzerland would thus welcome it if clear guidelines were given to the Monitoring Group for a more proactive and transparent dialogue with concerned Member States in the future.

United Nations A/58/676–S/2004/11

General Assembly
Security Council

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General Assembly
Fifty-eighth session
Agenda item 156
Measures to eliminate international terrorism

Security Council
Fifty-ninth year

Identical letters dated 8 January 2004 from the Chargé d'affaires a.i. of the Permanent Mission of the Sudan to the United Nations addressed to the Secretary-General and the President of the Security Council

Further to my letter dated 4 January 2004 concerning the incitement, support, sheltering and training of outlaw groups by Eritrea in order to destabilize the Sudan and cripple the ongoing peace process, I have the honour to enclose herewith two military communiqués issued in Asmara, capital of Eritrea, by the so-called "Beja Congress" and the "National Revolutionary Movement", claiming that on 14 October 2003 they attacked Tandalai Camp near Kassala, capital of the eastern region of the Sudan bordering Eritrea (see annexes I and II).

As I put this evidence of the flagrant support of Eritrea for terrorist groups before you, I would appreciate if you could circulate the present letter and its annexes as a document of the fifty-eighth session of the General Assembly, under agenda item 156.

(*Signed*) Omer B. **Manis**
Chargé d'affaires a.i.

04-20598 (E) 140104

Annex I to the identical letters dated 8 January 2004 from the Chargé d'affaires a.i. of the Permanent Mission of the Sudan to the United Nations addressed to the Secretary-General and the President of the Security Council

Beja Congress

Military statement

In a surprise attack on the morning of 14 October 2003, our heroic revolutionary forces were able to seize a camp in Tandalai El-Gash, north of the State capital Kassala, after a fierce battle at the end of which the enemy forces fled, leaving many dead and injured, as well as weapons, munitions and materiel. The national public highway linking Port Sudan and the capital, Khartoum, was also interrupted. The enemy's losses are still being counted and we shall provide you with fuller details later in another military statement.

Victory to the Beja!

(*Signed*) Idris Nur Mohamed **Ali**
Director of information and education
Official Spokesman

Annex II to the identical letters dated 8 January 2004 from the Chargé d'affaires a.i. of the Permanent Mission of the Sudan to the United Nations addressed to the Secretary-General and the President of the Security Council

Beja Congress

Sudan

Joint military statement

25 October 2003

On Friday, 24 October 2003, joint units of the forces of the Beja Congress and the National Revolutionary Movement (liberation forces) attacked and seized an enemy camp in Amadam in which the forces of the Aruma 34th infantry brigade were present and the Adr Abab camp in El-Gash north of Aruma. They also destroyed the main part of Adr Abab through which the El-Gash River flows, cutting off the Khartoum-Port Sudan national highway for the second time this month. Our heroic forces destroyed both camps, inflicting huge loss of life and of materiel on enemy forces and seizing four Land Cruiser vehicles containing machine guns and large quantities of weapons, munitions and materiel. Our forces continue to control the positions they have occupied and the enemy's losses are still being counted. Fuller details will be given in a subsequent statement. The forces of the Beja Congress and the liberation forces assure all our patient people that these strikes will continue with greater force and violence until the Islamic Front has been removed, and that the bilateral accords will not secure peace and stability. We also consider this to be a clear message to the Intergovernmental Authority on Development (IGAD) and its friends that we will continue our struggle until a comprehensive and just peace has been established in the Sudan. Victory to our steadfast masses, glory and immortality to our innocent martyrs, and revolution unto victory.

(*Signed*) Idris Nur Mohamed **Ali**
Director of information and education
Official Spokesman of the Beja Congress

(*Signed*) Awd **al-Bari**
On behalf of the liberation forces
Revolutionary National Movement

United Nations S/2004/12

Security Council

Distr.: General
12 January 2004

Original: English

Report of the Secretary-General concerning the credentials of the deputy representative of the United States of America on the Security Council

Pursuant to rule 15 of the provisional rules of procedure of the Security Council, the Secretary-General wishes to report that he has received a note verbale dated 5 January 2004 from the Representative of the United States of America to the United Nations stating that Mr. Stuart W. Holliday has been appointed deputy representative of the United States of America on the Security Council.

In the opinion of the Secretary-General, that communication constitutes adequate provisional credentials.

04-20388 (E) 120104

United Nations A/58/678–S/2004/13

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Security Council

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General Assembly
Fifty-eighth session
Agenda item 30
Question of Cyprus

Security Council
Fifty-ninth year

Letter dated 9 January 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Turkey to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a letter dated 8 January 2004, addressed to you by His Excellency Mr. Reşat Çağlar, Representative of the Turkish Republic of Northern Cyprus (see annex).

I should be grateful if the text of the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 30, and of the Security Council.

(*Signed*) Altay **Cengizer**
Chargé d'affaires a.i.
Deputy Permanent Representative

04-20434 (E) 150104

Annex to the letter dated 9 January 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Turkey to the United Nations addressed to the Secretary-General

With reference to the several statements made by the representatives of the Greek Cypriot Administration during the meetings of the various Committees of the General Assembly at its fifty-eighth session, I wish herein to set the record straight.

Year after year, we have witnessed the appearance of Greek Cypriot officials before United Nations bodies to repeat their well known baseless allegations against Turkey and the Turkish Republic of Northern Cyprus, ignoring the fact that the very title they carry in doing so is an usurped one secured only by violence in December 1963.

None of the resolutions to which references are made in the above-mentioned statements describe the legitimate and justified Turkish intervention of 1974, undertaken in accordance with the Treaty of Guarantee of 1960, as "aggression" or "invasion", or the subsequent presence of Turkish troops in the island as "occupation". Such distortions are purely a Greek Cypriot invention aimed at blurring the issue and confusing the innocent with the guilty. On this point, I would only like to recall the dramatic statement made by Archbishop Makarios, the Greek Cypriot leader at the time, before the Security Council on 19 July 1974, in which he openly accused Greece, not Turkey, of invading and occupying Cyprus. His remarks, which came only four days after the Greek coup of 15 July 1974, are well recorded in the annals of the United Nations and hardly require further elaboration.

What had been going on in Cyprus before the coup, however, is just as, if not more, significant. The years from 1963 to 1974 were a period in which the Greek Cypriots, aided and abetted by Greece, practised ethnic cleansing, terrorism and tyranny against the Turkish Cypriots, all in the name of enosis. The atrocities committed by the Greek Cypriots during that period drew comments from the international news media, such as *The Washington Post*, which reported in its issue of 17 February 1964 that "Greek Cypriot fanatics appear bent on a policy of genocide"; from prominent statesmen like George Ball, the United States Under-Secretary of State at the time, who wrote in his memoirs, entitled *The Past Has Another Pattern*, that "Makarios's central interest was to block off Turkish intervention so that he and his Greek Cypriots could go on happily massacring Turkish Cypriots" (p. 64); and from the United Nations Secretary-General himself, who reported to the Security Council on 10 September 1964 that the Turkish Cypriots had been put under "veritable siege" (see S/5950 and Corr.1). The attempt by Greek Cypriot officials to brush aside this 11-year-long ordeal of the Turkish Cypriots is, to say the least, outrageous. It shows their total insincerity and refusal to show any sign of remorse or an attitude conducive to reconciliation.

Turkish Cypriot people are for a new partnership in Cyprus. Bizonality, sovereign equality and the continuation of the 1960 system of Guarantees are the essential ingredients of a viable and lasting settlement. In order to have a realistic chance of arriving at the desired stage, the Turkish Cypriot side must have a negotiating partner who has come to terms with its heavy responsibility in the creation of the Cyprus issue, and who is willing and able to negotiate for a new partnership free of the devious tactics employed hitherto.

I should be grateful if the present letter could be circulated as a document of the General Assembly, under agenda item 30, and of the Security Council.

(*Signed*) Reşat **Çağlar**
Representative
Turkish Republic of Northern Cyprus

United Nations A/58/669–S/2004/14

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Security Council

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General Assembly
Fifty-eighth session
Agenda item 156
Measures to eliminate international terrorism

Security Council
Fifty-ninth year

Identical letters dated 4 January 2004 from the Chargé d'affaires a.i. of the Permanent Mission of the Sudan to the United Nations addressed to the Secretary-General and the President of the Security Council

Upon instructions from my Government, I have the honour to enclose herewith the letter dated 4 January 2004 from Mustafa Osman Ismail, Minister for Foreign Affairs of the Sudan, concerning the incitement, support and training by Eritrea of the outlaws in Darfur region (western Sudan) as part of Eritrea's continuous attempts to destabilize the Sudan and the ongoing peace process (see annex). In that regard, I would like to refer you to the previous complaints of my Government against Eritrea addressed to the Security Council.

I would highly appreciate it if you could circulate the present letter and its annex as a document of the fifty-eighth session of the General Assembly, under agenda item 156, and of the Security Council.

(*Signed*) Omer B. **Manis**
Chargé d'affaires a.i.

04-20042 (E) 150104

Annex to the identical letters dated 4 January 2004 from the Chargé d'affaires a.i. of the Permanent Mission of the Sudan addressed to the Secretary-General and the President of the Security Council

[Original: Arabic]
4 January 2004

In accordance with our obligations and responsibilities, with our faith in the principles of collective security and the peaceful settlement of disputes and with all the provisions of the Charter of the United Nations, we should like to draw your kind attention to the fact that the State of Eritrea continues with its regrettable attitude of seeking to undermine security and stability in the Sudan.

In keeping with our above-mentioned obligations, we have diligently informed you of the attacks perpetrated by Eritrea against the Sudan along the latter's eastern borders. In this regard, I should like to refer to our letter dated 7 October 2002 addressed to the President of the Security Council and concerning Eritrean attacks carried out against the Sudan on 3 October 2002 (document S/2002/1117).

It is clear that the Government of Eritrea persists in its reckless conduct, its hostile attitude and its disregard for the principles of good-neighbourliness, peaceful coexistence and the peaceful settlement of disputes between nations.

Eritrea was vexed by the Sudan's determination to achieve peace and secure a final and lasting settlement to the domestic conflict in the Sudan, a determination that won the full support of the United Nations and the entire international community, as well as the direct support of the Intergovernmental Authority on Development (IGAD). The prospects for the settlement look promising and we expect to reap the benefits therefrom in the near future.

The Government of Eritrea therefore decided to enlist the help of armed groups of outlaws operating in the Darfur region of Western Sudan, groups that can be classified as terrorist groups. It made contact with them, set up camps to train their members, hosted their leaders, provided them with encouragement and funding, supplied them with arms and furnished them with Eritrean travel documents to facilitate their movements. The Government of the Sudan has evidence to show that Eritrea is training the outlaws and providing them with support, encouragement and funding. The public statements of officials in Eritrea furthermore confirm their involvement in these activities.

We are in no doubt that everyone agrees with us that, by these regrettable acts of hostility, Eritrea is seeking to hamper the current peace efforts in the Sudan and collective international support for those efforts. The actions of the Eritrean Government are nothing but a malicious and hostile attempt to undermine the sincere and tireless endeavours that the Sudan has made and continues to make, both internally and in cooperation with the entire international community, to build confidence with armed and non-armed opposition groups in the Darfur region. This attempt at sabotage is entirely consistent with the hostile attitude that the Government of Eritrea has adopted, since it was established to the present time, towards all of its neighbours, without exception, and shows its determination to undermine security and stability in the Horn of Africa.

The ruling junta in Eritrea has never distanced itself from its bloody past of suppressing freedoms, violating human rights and physically eliminating its opponents. This is why it is isolated today from the prevailing international trend of rejecting violence in international relations, combating terrorism and terrorists and refusing to provide them with safe havens, training and funding. By its actions, Eritrea has made it possible for terrorists to attack peaceful civilians in Eastern and Western Sudan and to terrorize them, steal their property, burn their villages and deny those affected by those incidents in that region access to emergency aid.

The Government of the Sudan wishes to draw attention to the gravity of these hostile practices, which are characterized by an arrogant determination to undermine security and stability in the Sudan, and to their adverse consequences for security and peace in the region as a whole. It calls on you to take the appropriate measures to discharge the responsibilities of the United Nations for the maintenance of international security and peace.

(*Signed*) Mustafa Osman **Ismail**
Minister for Foreign Affairs

United Nations A/58/679–S/2004/15

General Assembly
Security Council

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13 January 2004
English
Original: Arabic

General Assembly
Fifty-eighth session
Agenda item 37
The situation in the Middle East

Security Council
Fifty-ninth year

Letter dated 12 January 2004 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General

On instructions from my Government, I transmit to you herewith a list of violations on the ground committed by Israel on 1 January 2004:

- At 12.45 p.m., a group of seven soldiers of the Israeli enemy entered Lebanon from the Shab'a farms, went to the liberated village of Bastarah south of the Halta farm and took up a position at the temporary site of the Indian battalion, where they harassed the local farmers and shepherds. At 2 p.m., they returned to the occupied farms.
- During this time, international emergency force patrols and Lebanese security forces headed towards the point of entry.
- It was established that the enemy force had crossed the barbed wire barrier around the occupied farms sector and had gone to the village of Bastarah, from which the Israeli enemy had withdrawn after being driven out of southern Lebanon in May 2000. This is the first time since the liberation that Israeli forces have penetrated this zone and harassed Lebanese farmers and shepherds.

These repeated, unjustified and inexcusable acts of aggression against the sovereignty of Lebanon confirm Israel's premeditated intention to threaten, endanger and compromise security and stability in order to serve its aggressive expansionist objectives throughout the region.

In drawing your attention to the gravity and potential consequences of these acts of aggression, I request that this letter be circulated as an official document of the General Assembly under agenda item 37 and as a document of the Security Council.

(*Signed*) Sami **Kronfol**
Ambassador
Permanent Representative

04-20446 (E) 150104 150104

United Nations S/2004/16

Security Council

Distr.: General
13 January 2004

Original: English

Letter dated 30 December 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 9 October 2003 (S/2003/1005). The Counter-Terrorism Committee has received the attached fourth report from Austria submitted pursuant to paragraph 6 of resolution 1373 (2001). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

04-20616 (E) 050204

Annex

Note verbale dated 23 December 2003 from the Permanent Mission of Austria to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of Austria to the United Nations presents its compliments to the Committee and in reference to the letter of 3 October 2003 has the honour to transmit Austria's fourth report on the implementation of Security Council resolution 1373 (2001) (see enclosure).

Enclosure*

16 December 2003

ADDITIONAL INFORMATION BY AUSTRIA TO THE COMMITTEE ESTABLISHED UNDER ARTICLE 6 OF RESOLUTION 1373 (2001) ADOPTED BY THE SECURITY COUNCIL AT ITS 4385TH MEETING ON 28 SEPTEMBER 2001

In its letter of 3 October 2003 the Chairman of the Counter-Terrorism Committee (CTC) established under Article 6 of United Nations Security Council Resolution 1373 (2001) asked Austria to submit further information on the steps taken to implement the resolution (Stage B). Austria is therefore pleased to provide the CTC with the following additional information.

I. Implementation Measures

Effectiveness in the protection of the financial system

I.1

In Austria two different regimes are in place in order to enforce the legislative provisions concerning the prevention and suppression of the financing of terrorism. Regarding the coordination among different agencies, it falls under the competence of the Oesterreichische Nationalbank (OeNB) to take the necessary measures in the field of financial sanctions, whereas the Federal Ministry of the Interior is primarily in charge of provisional measures in case of infringements of the Austrian Penal Code or the Austrian Banking Act which may be subsequently subject to court procedures.

In this context, the OeNB is responsible for the implementation of financial sanctions in particular concerning the supervision of the freezing of accounts belonging to persons, entities or bodies listed in various EC regulations. According to the provisions of these regulations, the Austrian credit institutions are obliged to freeze all funds belonging to persons, entities or bodies listed in these regulations.

The OeNB acts also as co-ordinator between the European Commission and the Austrian credit institutions.

On the other hand, the Federal Minister of the Interior, through its Federal Intelligence Unit, can block transactions upon notification of a suspicious transaction by a bank or other financial institution. This rapid response prevents any transfer of suspicious assets. The public prosecutor has to be informed about any such measure and the reasons for it without undue delay. Based upon this information, a preliminary injunction according to section 144a Code of Criminal Procedure can be issued in order to continue the freezing of the assets.

* Annexes are on file with the Secretariat and are available for consultation.

If there is no legal basis for a preliminary injunction, the public prosecutor has to request the Federal Intelligence Unit to defreeze the assets. The public prosecutor has to report any request to issue a preliminary injunction to the Federal Minister of Justice. In case of a request to defreeze assets, the report has to be made prior to the request.

I.2

The most recent amendment of the Banking Act, Federal Law Gazette I No. 35/2003 of 13 June 2003, added the financial transfer business to the banking activities defined under section 1 para 1 Banking Act. Financial transfer business is defined as "the transfer of assets, except for physical transports, by accepting money or other means of payment from the originator of the transactions and payment of a corresponding sum of money or other means of payment to the receiver by way of a non-cash transfer, communications, credit transfers or other use of a payment or settlement system". This provision will enter into force on 1 January 2004. By including the financial transfer business into the list of banking activities, any institution offering this activity needs a license from the Financial Market Authority (FMA) according to section 4 para 1 Banking Act. As a consequence, the FMA is the supervisory authority for all money remitters. This addition to the list of banking activities also leads to the application of sections 39 to 41 Banking Act (Customer Due Diligence provisions).

According to these provisions, "informal money/value transfer systems" are illegal under Austrian law and subject to criminal sanctions.

Therefore, FATF special :ecommendation VI (Alternative remittance) is fully implemented in Austria.

I.3

For a long time the existence of anonymous passbooks has been criticized. However, after amending the Banking Act Austria now fully complies with FATF recommendation 10. According to section 40 para 1 Banking Act, "all credit and financial institutions have to identify their customers (or the beneficial owner if a person is acting on the behalf of someone else) when establishing a business relationship. The opening of an anonymous passbook is not allowed in Austria anymore."

For existing anonymous passbooks section 40 para 1 subpara 7 provides that all these passbooks have to be denoted as special saving deposits. Any deposit on or withdrawal from such a saving deposit requires the previous identification of the holder. In addition, if someone wishes a withdrawal from an anonymous passbook with a balance of 15.000 € or more, the transaction must be reported to the Austrian financial intelligence unit for investigation (section 41 para 1a Banking Act).

Furthermore, according to section 31 para 3 in connection with section 99 para 18 Banking Act the transfer or acquisition of an anonymous passbook is forbidden and subject to sanctions.

In order to support the credit and financial institutions the Ministry of Finance issued a banking circular to inform about special due diligence requirements for transactions that split a large deposit into smaller ones and for withdrawals from anonymous saving passbooks before July 2002, as the amendment requiring the identification prior to any withdrawal entered into force in July 2002.

In an extensive special on-site examination the OeNB has verified the implementation of the new rules in about 100 Austrian banks.

Since every transaction now requires an identification of the holder, still existing anonymous passbooks will be eliminated over time. If no transaction occurs over a period of 30 years, the passbook is subject to the limitation of claims (section 1478 Civil Code).

I.4

A civil or administrative liability of legal persons is firmly established under Austrian law. As regards the Austrian criminal law, so far only a very limited criminal responsibility of legal persons exists, namely insofar as proceeds of a crime can be confiscated directly from a legal person if it has been illegally enriched (section 20 para 4 Penal Code); besides this, Austrian criminal law could be characterized by the principle "societas delinquere non potest".

However, in order to implement the Second Protocol to the EU Convention on the Protection of the Financial Interests of the European Community, Austria will be obliged to introduce criminal liability of legal persons. Thus, an amendment of the Penal Code introducing criminal liability of legal persons is currently under consideration. Nevertheless, the Austrian Penal Code provides additional measures in context with the confiscation of profits (section 20 Penal Code) and forfeiture (section 20b Penal Code). Particularly important in this connection is section 20b paragraph 1 Penal Code as (corporal and incorporeal) property being at the disposal of a criminal organization (section 278a Penal Code) or a terrorist group (section 278b Penal Code) or which has been provided or collected as a means for financing terrorism, shall be declared forfeited (see also in the annex the relevant provisions of the Penal Code).

I.5

In principle, Austrian law does not impose any specific time limits for which assets can remain frozen. Freezing of funds is addressed in the following provisions:

The Criminal Law Amendment Act of 2002, Federal Law Gazette I No. 134/2002, which entered into force on 1 October 2002, criminalizes inter alia the financing of terrorism and the collection of funds by terrorist groups and others for terrorist purposes.

Section 144a of the Austrian Code of Criminal Procedure, modified by the aforementioned Criminal Law Amendment Act, provides the freezing of assets within the disposition of a terrorist group as well as the freezing of funds collected or provided for the financing of terrorist acts.

This means that if there is suspicion of illegal profits, and it is supposed that these profits will be confiscated according to section 20 Penal Code, or if there is suspicion that property is at the disposal of a criminal or terrorist organization (sections 278a and 278b Penal Code), and was provided or collected for the purpose of financing terrorism (section 278d Penal Code), or derives from an offence, and it is supposed that this property will be declared forfeited according to section 20b Penal Code, the investigating judge must, upon application by the public prosecutor, issue a provisional injunction safeguarding such order, if there is concern that the enforcement of such order would otherwise be put in jeopardy or substantially impeded.

Concerning the request of another country to freeze funds linked to terrorism that are held in financial institutions in Austria, the Austrian law permits such a freezing irrespective of whether that country is a member of the EU or not. But if there is evidence that such funds are linked to terrorism, the relevant provisions of the Penal Code will apply. Thus, the above-mentioned injunction will be issued regardless of whether or not a request of another country to freeze such funds exists (see also in the annex relevant provisions of the Austrian law).

In addition, section 41 Banking Act provides for the temporary postponement of impending transactions.

Furthermore, section 99 subpara 17 Banking Act as well as sections 23 and 24 Foreign Exchange Act stipulate that any disposition over frozen accounts contrary to directly applicable EC Regulations is an administrative or criminal offence. This applies to all accounts frozen pursuant to EC regulations.

If there is no directly applicable EC regulation in place, section 78 paragraph 7 Banking Act empowers the Federal Government to prohibit, with the consent of the Main Committee of the National Council (first chamber of the Parliament) by way of regulation the disposition over accounts held with credit institutions in Austria if such accounts

(1) are the property of authorities or other state agencies of a particular state or of companies having their corporate seat in a particular state, or
(2) are the property of companies governed by certain authorities, agencies or companies (named in No. 1) either financially or by the way of organization or are otherwise economically controlled by these companies.

Although a number of suspicious transactions have been investigated, no link to financing of terrorism was established. For this reason there was no legal basis for issuing any provisional injunction pursuant to 144a Code of Criminal Procedure.

I.6

There exists an agreement on cooperation between the Federal Intelligence Unit, the Austrian money-laundering contact point, and the Federal Agency for State Protection and Counter-Terrorism (BVT), the competent authority to fight the financing of terrorism.

Accordingly, the money-laundering contact point reports possible cases of financing of terrorism to the BVT that investigates these cases. The money-laundering contact point in return is provided with information by the BVT so that it can take the necessary legal measures. It is mandatory that all cases finally be reported to the public prosecutor, which then may decide on further steps.

These procedures also apply with regard to requests from other States to investigate particular organizations suspected of having terrorist links.

As regards charitable and other non profit organizations, in order to be recognized they have to present their statute to the competent authority (Vereinsbehörde), which has to refuse their registration if they contain provisions contrary to Austrian law. According to the new Statute of Associations (Vereinsgesetz 2002) the financial statements of an association have to be revised annually by the statutory auditor under the same conditions as the financial statements of companies with limited liability or stock

companies, if the revenues (turnover) have exceeded 3 million € in the previous two years. If an association collects donations and the sum of these donations has exceeded 1 million € in the last two years, the financial statements have to be revised by an auditor as well in order to check that the money donated is made use of according to the statutory (and often publicly proclaimed) purpose. These control measures shall discourage abuse of these entities and ensure the detection of criminal activities and the identification of persons involved in such activities.

I.7

According to the provisions of the Banking Act, the FMA may within the scope of its mandate (banking supervision, which includes, inter alia, the prevention and combat of money laundering) appoint auditors, either from the Authority or from the OeNB, for the purpose of auditing credit institutions, their branch offices and representations outside of Austria and companies of the group of credit institutions.

Furthermore, there exists a money-laundering contact point in the Federal Intelligence Unit, which has policing, supervisory and advisory functions for the entire sector of banking and finance.

I.8

The OeNB regularly requests Austrian credit institutions to comply with the relevant provisions. So far, several inquiries of the OeNB in this regard gave as a result that in Austria no such accounts exist. One account - with an amount of about USD 4.000, - - was blocked in accordance with the respective provisions, but later de-freezed, as it could be cleared of alleged links to terrorist activities.

I.9

No cases have been reported yet. Upon request, the Austrian authorities would share information according to established rules in the field of justice and police cooperation.

Effectiveness of the counter-terrorism machinery

I.10

The legal framework for an effective fight against terrorism includes the Police Law, the Police Cooperation Law and the Code of Criminal Procedure.

In the field of criminal investigation and prosecution the fight against the financing of terrorism aims at destroying the financial basis of terrorist activities. This is also a keystone in the work of relevant police and judicial institutions. These investigations are triggered by suspicious facts collected by either national or foreign police, e.g. account holders have names similar to those of persons listed as terrorists. In none of these cases, relevant facts could be verified up to now. It should further be added that the crime "financing of terrorism", subject to up to 5 years in jail, has been established (section 278d Penal Code).

In Austria an informal working group (Counter Terrorism Intelligence) has been established to facilitate the exchange of information and the coordination of joint activities. Representatives of the Ministry of the Interior, of the Customs, of the Ministries of Economic and Labour Affairs, for Foreign Affairs, of Defence (Military Intelligence Office) and of Justice are participating in this working group.

As far as border controls are concerned, the Customs Service is responsible for checking security and safety aspects as well as carrying out customs clearances and customs controls. This is in line with the Communication of the European Commission concerning the role of Customs in the integrated management of external borders.

I.11

The legal basis for the control of transfers of arms and ammunition is the Austrian Foreign Trade Act and the War Material Act. According to these regulations all items included in the EU Common War Material List are subject to export controls.

When issuing export permits Austria takes into account the European Code of Conduct on Arms Exports as well as national principles and guidelines.

According to Criterion 7 of the EU Code of Conduct risks that the arms and equipment would be diverted within the buyer country or re-exported under undesirable conditions have to be assessed. To fulfil the purpose of Criterion 7 information about proliferation and terrorism including any proliferation or terrorism related activity or any involvement in clandestine or illegal procurement activities of the parties to the transaction are taken into account. Furthermore, the end-user of the transfer is assessed in accordance with the previous record of arms transfers.

Before ratifying the UN Protocol Against the Illegal Manufacture and Trafficking in Firearms, Their Parts and Components and Ammunition, Austria will have to amend its Foreign Trade Act, as the import or transit of arms is not yet subject to this act.

I.12

The procedure set up by Austria to deal with requests received from other States for assistance in criminal and judicial matters is set forth in the Austrian Extradition and Mutual Legal Assistance Act.

It should, however, be noted that the provisions contained therein only apply in the absence of conflicting rules of applicable bilateral and multilateral treaties. In this context, Austria is party to several Council of Europe and UN Conventions which contain provisions on mutual legal assistance. Furthermore, Austria has concluded bilateral treaties of mutual legal assistance with a large number of countries.

Under the Extradition and Mutual Legal Assistance Act, requests for assistance in criminal matters can be executed even in the absence of an applicable treaty on the basis of reciprocity, provided that the request emanates from a judicial authority and that the underlying facts constitute a criminal offence under Austrian law. However, the double criminality requirement does not apply to the service of documents if the person concerned is ready to accept them.

Assistance may not be granted if the facts underlying the request constitute a fiscal or political offence and if Austrian authorities would be prohibited under Austrian law from carrying out the action requested with regard to any similar offence had it been subject to investigation, prosecution or judicial proceedings under Austrian jurisdiction.

Requests for assistance are executed in accordance with the provisions of the Austrian Code of Procedure. A request to observe certain formal requirements can, however, be complied with as long as doing so would not be contrary to the basic principles of Austrian procedural law.

Competent authority for executing foreign requests for assistance is either the district court or the regional court, depending on the kind of assistance sought.

I.13

Undercover operations are permitted under section 54 Security Police Act (SPG) if they are necessary to prevent criminal offences. Visual and sound recordings may also be permitted under this provision. However, these measures only apply in order to prevent a serious crime.

Under section 22 SPG, persons testifying against criminal organizations have to receive special protection if needed. Section 54a provides for a new identity for witnesses and undercover agents. This provision also allows for the issuing of false documents by the authority.

Controlled deliveries and spurious purchases will only be allowed under section 23 if it is in the higher interest of the fight against criminal organizations or the prevention of a serious crime.

The use of "agents provocateurs" is illegal under section 25 Code of Criminal Procedure.

I.14

Austria signed the Convention on Cyber-Crime of the Council of Europe on 23 November 2001. Recently Austria fully implemented the Convention, in particular Articles 2 to 7 concerning computer-offences in the narrower sense as well as computer-referred falsifications and frauds by the Criminal Law Amendment Act of 2002.

This Amendment Act of 2002 includes new penal provisions as well as amendments to existing penal provisions against the abuse of computers in the broadest sense. A direct reference to counter-terrorism measures was established insofar as section 278c paragraph 1 subpara 6 Penal Code expressly establishes the elements of the offence "data damage" according to section 126a Penal Code as a possible terrorist offence.

The amendments include in particular the definition of the computer system in section 74 subpara 8 Penal Code as well as the following substantive penal provisions (sections of the Penal Code):

- section 118a: Illegal access to a computer system;
- section 119: Infringement of the secrecy of telecommunications;
- section 119a: Abusive interception of data;
- section 120, in particular paragraph 2a: Abuse of audio recording or listening devices;
- section 126b: Disturbance of the functioning of a computer system;
- section 126c: Abuse of computer programs or entrance data;
- section 225a: Counterfeit of data (see also the annex),

As regards Austrian legislation on interception of telecommunications and electronic surveillance, there are numerous investigative techniques, most of them provided for in the Austrian Law on Police Practice (LPP) and in the Criminal Procedure Code (CPC). The most important investigative techniques in connection with money laundering or the financing of terrorism and the predicate offences are:

- Observations (section 52 para. 2 LPP)
- Undercover operations/covert investigations (section 54 para 3 LPP)
- Controlled deliveries; for the time being, the existing provisions of international law in combination with sections 3 ff. Code of Police Cooperation (which provide for trans-border administrative assistance) are considered a sufficient legal basis (e.g. Art. 73 of the Convention implementing the Schengen Agreement; Art. 12 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union; Art. 22 of the Convention on Mutual Assistance and Cooperation between Customs Administrations).
- Searches of houses and persons (section 139 CPC)
- Interception of telecommunications (sections 149a – 149c CPC)
- Electronic surveillance (bugging and video recording, sections 149d – 149h CPC)

These investigative techniques are only admissible under certain circumstances if they are necessary to clear up criminal offences of varying gravity (including money laundering and financing of terrorism), some of them (searches, interception of telecommunications, electronic surveillance) generally have to be ordered by court.

I.15

No organisations have been notified as terrorist by Austria yet. There have neither been individuals notified as terrorists. Four persons have been arrested as terrorists or facilitators of terrorism since 2001.

Effectiveness of border controls

I.16

Currently there is no legislation requiring travellers to declare cash and other comparable means of payment. Precious stones and metals are covered by customs legislation and have to be declared. It is intended to introduce a legal obligation to declare cash and means of payment if requested by the customs officer. EC rules on this issue are still under consideration.

Border controls may be executed by the customs or the police. Controls are made routinely or in case of suspicion. No cases regarding financing of terrorism have been reported yet.

I.17

Austria is currently preparing its accession to the revised Kyoto Convention which has not entered into force yet. It is planed that the supply chain security aspect will be dealt with on the European level. A substantial amendment to the EC Customs Code covering this aspect is currently under consideration.

I.18

Currently there is no advance cargo information. With regard to passengers, neither the national authorities nor Austrian carriers provide for more information than required under APIS (Advanced Passenger Information System). However, foreign air carriers operating in Austria do provide data under PNR (Passenger Name Record).

I.19

According to the EC regulation 2320/2002, cargo and mail is subject to technical checks, which may be executed manually, if possible. As regards air cargo, these checks may occur randomly (about 1% of total, depending on risk assessment). The same applies to time-insensitive mail.

I.20

Citizens of the 21 countries listed by Austria as well as persons bearing travel documents issued by the authorities of these countries (such as refugees or persons without nationality) are subject to additional scrutiny when entering Austrian territory. Travel documents and visa are being screened according to the national and Schengen information systems even if their bearers are privileged third-country nationals having relatives with the nationality of one of the states of the European Economic Area.

Asylum seekers are, in addition to the procedures relevant for obtaining asylum, being scrutinized in the same way as visitors. In addition, their finger-prints are being documented in the system EURODAC.

EURODAC will especially help identify persons who have already sought asylum in another EU member state.

I.21

As the legal and factual situations described in preceding reports might have changed, Austria decided not to submit copies of such reports but rather to answer the questions directly. As regards the implementation of international best practices, codes and standards, according to FATF, Austria is in full compliance with all relevant international obligations.

II. Assistance and Guidance

II.2

Apart from the support to the UNODC, especially its Global Programme against Terrorism and its Terrorism Prevention Branch (TPB), there are no general Austrian programmes addressing all countries on technical assistance in Counter-terrorism. The Austrian Federal Ministry of the Interior maintains a dialogue with several countries, in particular with states of geographical vicinity in Eastern and South Eastern Europe. In this context, support is provided to partner countries including border security and terrorism prevention. These co-operation activities are addressing needs of individual partner countries on a case-by-case approach and an inclusion in the CTC Directory of Assistance might go beyond the scope of the Directory.

United Nations S/2004/17

Security Council

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Letter dated 30 December 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 9 October 2003 (S/2003/1010). The Counter-Terrorism Committee has received the attached fourth report from Japan submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

04-20628 (E) 040204

Annex

Note verbale dated 26 December 2003 from the Permanent Mission of Japan to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Representative of Japan to the United Nations presents his compliments to the Chairman of the Committee and, pursuant to paragraph 6 of resolution 1373 (2001) and in response to the latter's letter dated 3 October 2002, has the honour to transmit the fourth report of the Government of Japan on the steps it has taken to implement the resolution (see enclosure).

Enclosure*

JAPAN

FOURTH REPORT TO THE COUNTER-TERRORISM COMMITTEE PURSUANT TO PARAGRAPH 6 OF SECURITY COUNCIL RESOLUTION 1373 (2001) OF 28 SEPTEMBER, 2001

* Annexes are on file with the Secretariat and are available for consultation.

Fourth report(*) of Japan to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September

(Note: This report is a response to the comments/questions posed in the fourth letter of the CTC dated 3 October 2003.)

Sub-paragraph 1.1

Sub-paragraph 1(a) of the Resolution requires all States to suppress the financing of terrorism. The third report from Japan states (at page 6) that "financial institutions are also required by the Anti-Organised Crime Law to report to the Japanese Financial Intelligence Office (JAFIO) transactions that they suspect are related to financing of terrorism". Please provide information to the CTC indicating whether the JAFIO or another competent authority has jurisdiction to impose sanctions or penalties on parties who fail to comply with their reporting obligations. The CTC would appreciate receiving information on any criminal, civil or administrative sanctions which may be imposed for failure to comply with reporting obligations.

According to Article 54 of *the Law for Punishment of Organized Crimes, Control of Crime Proceeds and Other Matters (the Anti-Organised Crime Law)*, a financial institution or any other person provided for in a Cabinet Ordinance (hereinafter referred to as a "financial institution or the like") shall promptly report to the competent authorities in charge (including the JAFIO of the FSA) when it is deemed that there are suspicions that the property received by such financial institution or the like is the proceeds of crime. The competent authorities in charge (excluding the JAFIO) shall, upon receipt of the report, promptly notify the JAFIO of the matters regarding the report. In terms of sanctions, the supervisory organizations (such as the FSA) have jurisdiction to impose administrative sanctions (such as an administrative order) upon financial institutions or the like which fail to comply with their reporting obligations. At the FSA, the supervisory bureau rather than the JAFIO may impose the administrative sanctions. To date there are two cases in which the FSA has imposed administrative sanctions under Article 26 of the *Banking Law*.

Article 26. Suspension of Banking Business Activity

1. When deemed necessary to ensure the sound and appropriate management of banking business of a bank in light of the business or financial conditions of said bank or the business or financial conditions of said bank and the subsidiaries thereof, the Prime Minister may require said bank to submit a plan for improvement of business operations containing a statement of the measures said bank will implement and the timing for such, as necessary, to ensure the sound and appropriate management of banking business, may order said bank to modify any such plan for improvement of business operations, may order said bank to suspend all or part its business operations for a period of time, may order said bank to deposit assets to competent authorities or may order that other measures be implemented as deemed necessary for supervisory reasons.

Sub-paragraph 1.2

As regards the suppression of the financing of terrorism as required by sub-paragraph 1(a) of the Resolution, the CTC would appreciate receiving information on how JAFIO is structured and staffed (financially and technically) to perform its mandated functions? Please provide data concerning the requirements referred to immediately above.

The JAFIO is currently staffed with 18 persons, including the staff seconded from law enforcement authorities. A budget of 64 million and 955 thousand yen has been prepared as the required costs for JAFIO (excluding personnel costs).

Sub-paragraph 1.3

Sub-paragraph 1(c) of the Resolution requires States to freeze funds and other financial or economic resources related to terrorism. In this regards does Japan have a separate authority or agency responsible for seizing and confiscating terrorist related assets? The CTC would appreciate receiving an outline of the legal basis for such an authority or agency as well as an outline of its functions. The CTC would also welcome an account of the legal provisions allowing for review of the decisions taken by any such authority or agency. Please indicate the financial magnitude of the assets frozen.

As far as criminal procedures are concerned, the seizing and confiscating of terrorist related assets are generally subject to the same legal provisions as other crimes; The *Code of Criminal Procedure*, the *Penal Code*, the *Law for Punishment of Organized Crimes, Control of Crime Proceeds and Other Matters*, etc. The seizure of assets as evidence may be undertaken either by public prosecutors or by judicial police officials.

With regard to confiscation, in Japan, there are no provisions for confiscation other than following a criminal conviction. Since September 2001, when the UN Security Council adopted Resolution 1373, there have been no assets seized or confiscated in a criminal procedure having to do with a terrorism-related offense. (NOTE: There has been no typical terrorism offense since the so-called "Sarin Subway Attacks" committed by the Aum Shinrikyo cult in 1995. For related information concerning assets frozen prior to September 2001, please refer to the sub-paragraph 1.5.) A person may make a request to a court for review of seizure or confiscation according to the provisions of the *Code of Criminal Procedure*.

Sub-paragraph 1.4

Sub-paragraph 1(d) of the Resolution requires States to have legal measures in place to regulate alternative money remittance service/transfer services and informal banking networks. The CTC would appreciate receiving the number of money remittance/transfer services registered and/or licensed in Japan? Can money remittance/transfer services engage in business in Japan without being registered or licensed?

The Japanese government permits money remittance services to be provided only by licensed financial institutions such as banks and by governmental financial institutions. Engaging in money remittance services without being licensed is subject to punishment under domestic laws such as the *Banking Law*. The total number of financial institutions which operate money remittance services is 2381 as of 31 March 2003.

Sub-paragraph 1.5

In its first report, Japan states (at page 5) that "the Government has so far frozen 4 accounts (with about $600,000) in Japan, and is examining other accounts". The CTC would appreciate receiving up to date information about other accounts which were frozen because of their suspected connection with the financing of terrorism.

The four frozen-accounts (with about US$600,000) in the first report were unfrozen in January 2002, as the UN Sanctions Committee delisted the entities concerned (Da Afghanistan Bank, Banke Millie Afghan, Agricultural Development Bank of Afghanistan and Export Promotion Bank of Afghanistan) from the list. No other accounts have been frozen since then.

Sub-paragraph 1.6

In order to effectively implement sub-paragraph 2(e), States are required to take measures to ensure that terrorists and their supporters are brought to justice. In this regard has Japan provided its administrative, investigative, prosecutorial and judicial authorities with specific training aimed at enforcing its laws in relation to:

- *Typologies and trends to counter terrorist financing methods and techniques?*
- *Techniques for tracing assets, which represent the proceeds of crime or which are to be used to finance terrorism, with a view to ensuring that such assets are frozen, seized or confiscated?*

The Ministry of Justice organizes conferences and training courses for prosecutors from all over Japan to share information about activities of criminal organisations, enhance investigative techniques against such crimes and effectively implement provisions for deprivation of funds such as illicit proceeds. Contents of conferences and courses are not limited to terrorist crimes but cover organized crime in general.

The National Police Agency has various training programs on investigation of financial crimes at the National Police Academy, Regional Police Schools and Prefectural Police Schools, based on the view that the training of police personnel is essential to detecting and preventing money laundering and financing of terrorism. In 2002, the National Police Academy strengthened its organization in order to enhance the quality of training for investigation of financial crimes, including investigation of financial institutions for a flow of concealed funds and investigation of financial conditions of companies.

Sub-paragraph 1.7

Sub-paragraph 2(e) of the Resolution requires each Member State, inter alia, to have in place effective police, intelligence and/or other structures as well as adequate legal provisions to detect, monitor and apprehend those involved in terrorist activities and those supporting terrorist activities with a view to ensuring that those persons are brought to justice. The CTC would be grateful for information concerning the use of special investigative techniques in the fight against terrorism, such as undercover police operations, controlled deliveries and the monitoring and/or the interception of terrorist communications (such as the internet, radio, audio-visual media and other advanced communications techniques).

1. Undercover Police Operations and/or Controlled Deliveries

Although there are no specific provisions which explicitly empower investigators to conduct undercover operations or controlled deliveries, such investigative techniques are deemed to be legitimate as long as they do not include coercive measures which constitute violations of human rights. As to undercover operations, the *Narcotics and Psychotropics Control Law*, *Opium Law and Firearms and Swords Control Law* specifically allow investigators to receive narcotics, opium and firearms under the permission of the competent authorities. As to controlled delivery, there is a closely related provision in the *Law Concerning Special Provisions for Narcotics and* the *Psychotropics Control Law, etc., and Other Matters for Prevention of Activities Encouraging Illicit Conduct and Other Activities Involving Controlled Substances through International Cooperation*, which stipulates that customs officers may permit the importation or exportation of illegal drugs under certain requirements.

2. Monitoring and/or Interception of Terrorist Communications

Article 222-2 of the *Code of Criminal Procedure* and the *Telecommunications Interception Law for Criminal Investigation* empower the police to conduct interception of communications among suspected perpetrators in certain serious organized crime activities such as murder and illegal transactions of firearms or drugs, with warrants issued by judges. Although these provisions may be utilized in investigations of terrorist organizations, the procedures followed must meet requirements such as the existence of sufficient grounds to

suspect commission of the specific criminal offences and grounds to suspect the involvement or complicity of more than one person.

Sub-paragraph 1.8

In order to effectively implement sub-paragraph 2(e) of the Resolution, States have to take measures to ensure that terrorists and their supporters are brought to justice. In this regard are there programs in place in Japan to protect members of the judiciary, law enforcement officers, witnesses and persons willing to provide information from intimidation by terrorists? If there were such programmes, the CTC would be grateful to receive information on that.

Under the *Penal Code*, obstructing or compelling performance of official duty is criminalized as follows:

Article 95. Obstructing or Compelling Performance of Official Duty

1. A person who uses violence or intimidation against a public officer engaged in the performance of his or her duties shall be punished with imprisonment at or without forced labour for not more than three years.

2. The same shall apply to a person who uses violence or intimidation against a public officer in order to cause him or her to perform or refrain from performing an official act or in order to bring about his or her resignation.

Under the *Code of Criminal Procedure*, witnesses and persons willing to provide information are protected (ANNEX 1). The *Penal Code* contains provisions criminalizing the act of intimidation, especially the intimidation of a witness (ANNEX 2).

Sub-paragraph 1.9

Effective implementation of paragraph 1 and 2 of the Resolution requires States to criminalize the financing of terrorism and ensuring that those who participate in terrorism are brought to justice. In this regard could Japan please provide the CTC with information relating to the number of persons prosecuted for?

- *terrorist activities;*
- *the financing of terrorist activities;*
- *providing support to terrorist or terrorist organizations.*

How many of these have been prosecuted for inviting support (including recruitment for):

- *proscribed organisations; and*
- *other terrorist groups or organisations.*

In Japan, since September 2001, when UN Security Council adopted Resolution 1373, there has been no criminal prosecution for the listed five (5) types of offense. (NOTE: There has been no typical terrorism offense since the "Sarin Subway Attacks" committed by the Aum Shinrikyo cult in 1995.)

Sub-paragraph 1.10

Effective implementation of legislation, covering all aspects of the implementation of the Resolution, requires States to have in place effective and coordinated executive machinery as well as to create and utilize adequate national and international counter-terrorist strategy. Could Japan outline how its special counter-terrorist strategy, policy and /or activity address the following areas;

- *Criminal investigation and prosecution;*
- *Counter-terrorist intelligence (human and technical);*
- *Links between terrorism and others criminal activities;*
- *Physical protection of potential terrorist targets;*
- *Emerging threats;*

1. Criminal Investigation and Prosecution

Conducting thorough criminal investigations of terrorist organizations and depriving them of their resources such as funds, weapons and members is the basic strategy to counter terrorist threats. Japanese law-enforcement agencies have conducted many investigations of terrorist incidents, including the Sarin Subway Attacks in Tokyo by Aum Shinrikyo. Although the incident could not be prevented, a series of simultaneous raids on the groups facilities and the swift apprehension of leading members served to identify and neutralize the group rather quickly.

Since the terrorist attack on 11 September 2001, Japanese law-enforcement agencies have been working exhaustively to fight against terrorist threats and exerting their utmost efforts in the areas of criminal investigation and prosecution as well as counter-terrorist intelligence and physical protection of potential targets.

2. Counter-terrorist Intelligence

Japanese law-enforcement agencies and other government organisations have a strong tradition of countering terrorist threats effectively by gathering and exchanging necessary intelligence in order to utilize the results in criminal investigation and protection of potential targets. These functions have been reinforced significantly over the past two years, especially in the area of interagency coordination and international cooperation. Nevertheless, further development in this area is another focal point of our endeavour, including considerations of necessary shifts in priorities and reforms of organizational structures of the agencies concerned.

3. Links between terrorism and others criminal activities

(1) Since it is our great concern that organisations or countries which support terrorist activities may acquire WMD (weapons of mass destruction) in order to carry out serious terrorist attacks, Japan is proactively working to regulate the illegal export of WMD related materials. For example, Japan is making efforts to reveal illegal cases through our intelligence and criminal investigation activities and to maintain close cooperative relationships with other countries.

(2) Japan is tightening border control and control of illegal residents in order to prevent terrorists from infiltrating into our country and committing terrorist acts in Japanese territory.

4. Physical protection of potential terrorist targets

Although good intelligence and thorough investigation are the primary tools for prevention of terrorist attacks, physical protection of potential terrorist targets is also an indispensable element in counter-terrorism strategy. The basic goals in this area are to deter terrorists from attempting attacks, to detect terrorists and physically prevent them from attacking, and to manage the consequences in order to avoid exacerbation of the damage. The Japanese government has been putting its utmost efforts since the terrorist attacks of 11 September 2001 into attaining these aims, by protecting not only its own interests but also the interests of its allies. To date there have not been any major terrorist incidents in Japan. The Japanese government will continue to improve its capacity in this area by further reinforcing equipment, systems and contingency plans, as well as by promoting training and conducting exercises at the local, national and international levels.

At present, the Japanese government carries out measures for physical protection of such potential terrorist targets as are listed below; as well as the necessary physical protection measures for the interest of allies, namely embassies and consuls, etc., in Japan, according to the security situations.

(1) Nuclear power plants

- The police have positioned special units with tactical weapons around the clock at all nuclear power plants.
- The Japan Coast Guard has kept its armed patrol vessels positioned at all times in the vicinity of all nuclear power plants since the terrorist attacks of 11 September 2001, and the special units are always ready to respond immediately to prevent terrorists from gaining access to nuclear plants.
- Based on the *Law for the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors*, an operator is obliged to set regulations for protection and to implement various measures, such as posting of security guards and control of access to a facility site.

(2) Prime Minister's Official Residence

The Prime Minister's official residence protective force of the Metropolitan Police Department is deployed. It is a specialized unit with equipment which can cope with attacks by firearms, explosives, etc. This force operates in close coordination with protective agents and with the riot squad that defends the perimeter.

(3) Facilities where a large number of people gather (such as a large-scale stadium)

The police give advice and instructions to the administrators of facilities where a large number of people gather about strengthening of security measures and carry out necessary security activities, depending on the situation.

(4) Subway, etc.

The police conduct the necessary security activities in cooperation with the subway administrators, such as reporting of the discovery of suspicious objects and installation of crime prevention cameras.

(5) Airport

In order to prevent passengers from taking dangerous items such as weapons on an aircraft and to identify suspicious characters, etc., the police deploy police officers in the security check areas of airports and reinforce the watch at the check-in counter, etc.

5. Emerging threats

It is our great concern that the threat of so-called "cyber-terrorism" is increasing. In Japan, "cyber-terrorism and similar activities" refers to electronic attacks against critical infrastructures that have potential critical effects on social and economic activities of the nation, using info-communications networks or information systems. In order to prevent the occurrence of cyber-terrorism and exacerbation of damage, investigate cyber-terrorism incidents and arrest the perpetrators, the Japanese government is actively taking counter-measures by strengthening counter-cyber-terrorism investigative activities and intelligence functions, as well as by cooperating more closely with managers of the critical infrastructures.

Sub-paragraph 1.11

Effective implementation of paragraphs 1 and 2 of the Resolution require States to take the necessary steps to prevent terrorist acts and sub-paragraph 2(g) seeks to prevent the movement of terrorists or terrorist groups by having effective customs and border controls to prevent and suppress the financing of terrorist activities. Does Japan impose controls on the cross-border movement of liquid cash, negotiable instruments as well as precious stones and metals (for example, by imposing an obligation to make a declaration or to obtain prior authorisation before any such movement takes place)? Please provide information concerning any relevant monetary or financial thresholds.

Article 19 of the *Japanese Foreign Exchange and Foreign Trade Law* obliges anyone who transports means of payment exceeding 1 million yen or its equivalent, or precious metal (gold of more than 90% purity

only) exceeding 1 kg. of total weight, to submit a report to customs. The means of payment includes Japanese or foreign currencies, cheques (including traveller's cheques), promissory notes and securities.

Sub-paragraph 1.12

Paragraph 2 of the Resolution also requires States to prevent the movement of terrorists and the establishment of safe havens. As regards international flights, does Japan compare the information contained in advanced passenger manifest programs with the information contained in counter-terrorist databases with a view to scanning inbound passengers before they land?

Japan is preparing to introduce the Advance Passenger Information System (APIS) in the fiscal year 2004. In the APIS, data on crews and passengers, which are provided before the arrival of international flights at Japanese airports, are compared with the blacklist, including information on terrorists.

Sub-paragraph 1.13

Sub-paragraph 2(g) requires States to have in place effective measures to control the issuance of identity papers and travel documents. Could Japan please outline the legal provisions and other procedures in place which govern the acquisition of Japanese citizenship and passport?

The *Nationality Law* governs the acquisition of Japanese nationality. In accordance with the law, for example, a child whose father or mother is a Japanese national at the time of his or her birth, or a child born in Japan both of whose parents are unknown, naturally acquires Japanese nationality at the time of birth. A child under 20 years of age, who has acquired the status of a legitimate child by reason of the marriage of his or her father and mother and their acknowledgement may acquire Japanese nationality by making notification to the Minister of Justice. This applies to a child whose father or mother was, at the time of the child's birth, a Japanese national and is presently a Japanese national. A person who is not a Japanese national may acquire Japanese nationality by obtaining naturalization permission from the Minister of Justice.

The outline of the legal provisions and other procedures which govern the acquisition of a Japanese passport is as follows:

1. *Passport Law*

The characteristics of the *Passport Law* are as follows:

(1) Application principle: A passport is issued upon application by a person. At the time of application, an applicant shall in principle appear in person. The applicant may send a proxy for application, but at the time of delivery the applicant must appear in person.

(2) "One Passport to One Person" principle: Prohibition against the holding of more than one passport.

(3) Each prefecture administrates passport issuance in Japan.

(4) Penal provisions: Punishment for fraudulent passports or illegal use of passports.

2. Structure related to passports within the Ministry of Foreign Affairs

The Passport Division, Consular and Migration Affairs Department, is in charge of passport administration. Only the Ministry issues diplomatic and official passports. In Japan, the legal authority to issue ordinary passports belongs to the Minister for Foreign Affairs, but prefectural passport offices are in charge of issuing such passports in cooperation with the Ministry, since prefectural governors are entrusted to assume this responsibility under the *Passport Law*.

3. Procedure for issuing ordinary passports

Application forms are to be filled out and signed by applicants. Upon receipt of application, a passport officer in charge collates the required documents attached to the application such as a certified copy of the family register or abstract copy thereof and a certified copy of the resident register, verifying that the applicant has not made any mistake in filling out the application, and, upon confirming the identity of the applicant, proceeds to screen the application. At the time of application, an applicant must present some form of identification.

All of the computer terminals in prefectural passport offices are on-line with the host computer (mainframe) of the Ministry of Foreign Affairs, and all passport application data are to be examined in comparison with previous data, especially in order to avoid multiple issuance as well as to screen through the updated blacklist for those who have criminal or related records, by means of the host computer.

For applications within Japan, it generally takes one week for the domestic offices to issue passports. Machine readable passports (MRP) have been issued in Japan since November 1992 in accordance with guidelines introducing the use of MRP, which were adopted as a means of accelerating the clearance of increasing numbers of passengers at international airports by the International Civil Aviation Organization (ICAO). This kind of passport is also issued at thirty-one overseas offices.

Sub-paragraph 1.14

Paragraph 3(g) of the Resolution requires States to have procedures in place to prevent the abuse of refugee status by terrorists. Japan states, in its first report (at page 13), that "the government of Japan does not in general reveal the details of refugee applicants in order to protect their lives and privacy". The CTC would appreciate knowing whether the locations of asylum seekers in Japan are monitored. If so, is this task undertaken by local police or by a national organisation?

All foreigners staying in Japan, regardless of whether they are refugee applicants or not, are obliged to apply for registration of their status with the local government within 90 days of their landing, in accordance with the *Alien Registration Law*. The Japanese immigration authority is able to verify the location and status of refugee applicants by taking appropriate measures through this alien registration system. Illegal residents, including refugee applicants, under the procedure for deportation, which is different from the procedure for recognition of refugee status, are in principle detained in one of the immigration facilities and kept under close observation by the immigration authorities.

Sub-paragraph 1.15

Sub-paragraph 2(a) of the Resolution requires each Member State, inter alia, to have in place appropriate mechanisms to control and prevent terrorist access to weapons. Japan indicated, in the first report (at page 10), that it has complied with international standards with a view to protecting and safeguarding hazardous materials, such as radiological, chemical, and biological substances and their waste products. Has Japan established a national reporting or auditing procedure to detect the loss or theft of the materials, referred to immediately above, from government or private sources?

(Radiological materials)

Concerning radiological materials, the loss or theft of radiological materials is to be reported to the police or the Japan Coast Guard without delay, in accordance with the *Law Concerning Prevention from Radiation Hazards due to Radioisotopes, etc.* and the *Law for the Regulations of Nuclear Source Material, Nuclear Fuel Material and Reactors.*

(Chemical substances)

Concerning chemical substances, the loss or theft of the Specified Chemicals (i.e., Schedule 1 chemicals as defined by the Chemical Weapons Convention) is to be reported to the police or the Japan Coast Guard without delay, in accordance with the *Law on the Prohibition of Chemical Weapons and the Regulation of Specific Chemicals, etc*. At the same time, the law requires mutual cooperation between the Ministry of Economy, Trade and Industry and the National Public Safety Commission to prevent the loss or theft of such substances. The Specific Chemicals in the research facility of the Japan Defense Agency are strictly controlled by the Agency, in accordance with the *Order Regarding the Production of the Specific Chemicals* and other rules, in which the appropriate procedures for production and use of the chemicals are stipulated, thereby preventing their loss or theft. In addition, certain chemicals stipulated in the *Poisonous and Deleterious Substances Control Law* and the *Cabinet Order* for its implementation are subject to immediate reporting to the police in case of their theft or loss.

(Biological substances)

Voluntary reporting of the loss or theft of biological materials to the police is encouraged, as in the case of loss or theft of other commodities. After the 9.11 terrorist attack on the United States, competent ministries have been requesting those who possess biological agents to take appropriate biosecurity measures, including the reporting of the loss or theft of the agents to those ministries as well as to the police. In addition, the competent ministers may order those who deal with biological agents or toxins to make compulsory reports regarding their activities to the extent necessary for preventing the developing, producing, retaining and acquiring of such agents for purposes other than peaceful ones.

Sub-paragraph 1.16

Has Japan the necessary specialist procedures and personnel in place in order to provide the appropriate safety and law enforcement responses in the event of such materials being detected? In such an eventuality, would Japan be able or willing to assist another country or countries?

NBC special units have been established at eight Prefectural Police Headquarters in order to respond immediately in case of NBC terrorism for information gathering, detection and collection of agents and evacuation of victims, in cooperation with other relevant organizations. NBC equipment and machinery (for example, detectors, decontamination equipment and protective suits) are provided to all Prefectural Police Headquarters and 138 Fire Departments out of approximately 900 in the country are provided with the necessary equipment in order to counter chemical or biological disasters. The Japan Coast Guard also has special units to cope with terrorism. Depending on the situation, the Self-Defense Forces would support relevant organizations by dispatching their forces as disaster relief operations, etc. Any assistance to other countries will be seriously considered, depending on the circumstances.

Sub-paragraph 1.17

The CTC is aware that Japan may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organisations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of Japan's response to these matters as well as details of any efforts to implement international best practices, codes and standards which are relevant to the implementation of the Resolution.

There is no such report or questionnaire.

Sub-paragraph 2.2

The CTC's Directory of Assistance (www.un.org/sc/ctc) is frequently updated to include new relevant information on available assistance. The CTC notes with appreciation that the Government of Japan has offered to provide assistance to other States in connection with the implementation of the Resolution and would appreciate receiving any updates to the information posted on the Directory of Assistance. Furthermore, the CTC would encourage Japan to inform the CTC of assistance it is currently providing to other States in connection with the implementation of the Resolution.

Japan has extended counter-terrorism capacity building assistance. Details of such assistance are as indicated in ANNEX 3.

United Nations S/2004/18

Security Council

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Letter dated 30 December 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 2 October 2003 (S/2003/963). The Counter-Terrorism Committee has received the attached third report from Nicaragua submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

04-20640 (E) 300104 030204

Annex

[Original: Spanish]

Note verbale dated 23 December 2003 from the Permanent Mission of Nicaragua to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of Nicaragua to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and transmits herewith its replies to the comments and questions of the Counter-Terrorism Committee concerning the supplementary report submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

Enclosure*

Report of the Republic of Nicaragua

Replies to the comments and questions of the Counter-Terrorism Committee concerning the supplementary report of Nicaragua submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001)

Managua, 22 December 2003

Progress report on the revision of domestic law and the study of a model law relating to terrorism

Resolution 1373 (2001) states:

"*[The Security Council,]*

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall:

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;"

The draft bill on counter-terrorism aims at preventing and suppressing terrorist acts and any activity related to terrorism, especially acts that harm or threaten human life, social, economic and financial security, the security of the Nicaraguan State in particular and regional and international peace in general.

The bill would also introduce specific measures to strengthen the penal laws to ensure that terrorist acts and activities related to terrorism are punished as crimes and to authorize administration, freezing and possibly confiscation of financial and material assets used by networks or groups of persons for the illicit activities covered by the bill.

To accomplish that, the bill proposes to strengthen international cooperation and mutual legal assistance among the countries of the region with a view to taking specific measures in terms of border, financial, immigration and customs controls and to set rules governing some extradition matters.

The bill applies to the prevention, investigation and prosecution of terrorist acts and activities related to terrorism. Its scope of application is limited by the principles of non-intervention and respect for national sovereignty.

The provisions of the treaties, conventions and international agreements related to terrorism to which Nicaragua is a party are applicable provided that they are not incompatible with the Political Constitution.

The bill contains a chapter on the laundering of funds or assets derived from terrorist acts. The chapter deals with all matters pertaining to the laundering of funds

* Annexes are on file with the Secretariat and are available for consultation.

or assets, financing of terrorist acts, use of financial resources, obstruction of justice and non-compliance with the law, among other topics.

At present, the draft bill on counter-terrorism is under review in the National Assembly.

Legal obligation

("... legal obligation of banks, financial institutions and other intermediaries, such as lawyers, accountants and notaries, when involved in brokering activities, to report suspicious transactions to the relevant authorities")

Resolution 1373 (2001) states:

"[The Security Council,]

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall:

(a) Prevent and suppress the financing of terrorist acts;

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;"

Nicaraguan law provides the following legislative and regulatory framework:

- Act No. 285 entitled "Act on Narcotic Drugs, Psychotropic Substances and Other Controlled Substances and Laundering of Money and Assets Deriving from Illicit Activities" (published in Official Gazette Nos. 69 and 70 of 15 and 16 April 1999);
- Regulations implementing Act No. 285, issued by Decree No. 74-99 (published in Official Gazette No. 124 of 30 June 1999);
- Regulation on the Prevention of the Laundering of Money and Other Assets Applicable to All Financial Institutions under the Supervision of the Superintendency of Banks and Other Financial Institutions, issued by Orde

CD-SIBOIF-197-2-Mar01-2002 (published in Official Gazette No. 71 of 18 April 2002).

With respect to the prevention of money-laundering, Act No. 285 establishes the obligation to maintain named accounts and prohibits the opening and maintenance of anonymous accounts or accounts held under fictitious or incorrect names; it establishes the obligation to verify, by precise and reasonable means, the identity, status as agent, domicile, legal capacity, occupation or line of business of the persons concerned, whether they are regular or occasional clients.

In addition, for every type of transaction, forms must be kept to identify (based on a legal, authoritative document) the signature and address of the person who is physically carrying out the transaction, the person in whose name the transaction is being carried out and the payee or beneficiary of the transaction. The institutions must take reasonable steps to obtain and preserve information about the persons for whom an account is opened or a transaction carried out, and they must put into effect verification programmes on knowing the client and creating client profiles.

General guidelines are set for the internal rules governing deposits which all entities authorized to take in funds from the public in the form of deposits must have, providing, among other things, for proper identification of the person who opens or accesses an account.

Act No. 285, with respect to the prevention of money-laundering, requires that special attention should be paid to transactions, whether completed or not, that are complex, unusual and significant and to all unusual patterns of transactions; to periodic transactions that have no obvious legal basis; to transactions which the institution knows, suspects or has reason to suspect are being used to conceal or launder funds and assets derived from suspicious activities or to evade the laws against money-laundering; and to transactions that apparently have no legitimate or normal purpose. Such transactions must be reported to the Superintendency of Banks and Other Financial Institutions.

It also provides that this "individual report of unusual activity" must be submitted to the Superintendency of Banks within the thirty (30) days from the date that the activity is detected that gives rise to the requirement of preparing and submitting the report.

With regard to penalties for failure to submit the report, Act No. 285 provides that natural persons (the owners or administrators of the institutions) shall be liable to a fine of from 10,000 to 60,000 córdobas and suspension of licence for from 3 to 24 months, without prejudice to the criminal liability that they may incur as accessories before or after the fact in accordance with the penal laws.

Freezing of assets

Resolution 1373 (2001) states:

"*[The Security Council,]*

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall:

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or

participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities."

The draft bill on counter-terrorism deals with the freezing of accounts and deposits. The procedure established is handled through the Attorney-General of the Republic and/or the Chief State Counsel, who may request the competent judge to order the freezing of accounts and deposits of natural or legal persons under prosecution for alleged association with criminal activities.

As for the procedure for freezing funds of persons suspected of financing terrorist activities, a judicial authority may order, directly or through the Superintendency of Banks, the freezing or blocking of the accounts of persons accused or convicted of any illicit activity, including terrorism-related activities.

The details of transactions effected through such accounts — or through others that are not frozen — may be supplied to the competent authorities for the purposes of investigating and bringing charges, either upon a simple request of the Attorney-General of the Republic to the Superintendency of Banks or following an order of the judicial authority lifting banking or financial secrecy.

In principle, the judicial procedure for freezing funds is identical for both terrorism and money-laundering. However, in the latter case, it may also be preceded by the transmission of a suspicious transaction report from a bank to the Superintendency of Banks in accordance with the provisions of Act No. 285 and the Regulation for the Prevention of the Laundering of Money and Other Assets Applicable to All Financial Institutions under the Supervision of the Superintendency of Banks and Other Financial Institutions, which stipulates that banks and other financial institutions should provide information on any transaction that is suspected of being linked to money-laundering or that departs from the normal pattern associated with the account in question.

The Superintendency of Banks and Other Financial Institutions immediately transmits such reports to the Financial Analysis Commission, which is chaired by the Attorney-General. In conjunction with the circulars disseminating the lists of names of persons and entities suspected of being linked to terrorism, such reports could help to detect transactions that involve the diversion of funds to terrorist activities, either because the recipient of the funds has links to suspected persons or entities or because the subsequent investigation uncovers leads to them.

Recruitment of persons in its territory with a view to joining terrorist groups

("... terrorist groups operating either in its territory or abroad. It should be noted that recruitment to terrorist groups may be carried out by means of deception. For example, the putative purpose of recruitment may be one (e.g. teaching) which differs from its true purpose.")

Resolution 1373 (2001) states:

"*[The Security Council,]*

Acting under Chapter VII of the Charter of the United Nations,

2. Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;"

One chapter of the draft bill on counter-terrorism covers all matters relating to terrorist acts and related activities. A chapter on the laundering of funds or assets derived from terrorist acts covers matters relating to participation in the commission of terrorist acts, use of financial resources, financing of terrorist acts and all matters relating to, inter alia, the transport, supply, sale, possession and manufacture of military weapons, chemical weapons, explosives, ammunition and explosive or lethal devices.

In order to deal with international crime, Nicaragua has had a National Plan against Terrorism and Related Offences since 2001 aimed at:

- Utilizing and expediting mechanisms for exchanging information about possible acts of terrorism at the domestic level and with national, regional and multilateral bodies;
- Strengthening port and airport security;
- Doing everything possible to monitor and track migratory movements in order to identify any movements made by persons linked to terrorism;
- Strengthening national legislation on terrorism, taking into account the relevant regional and international instruments; and
- Promoting the implementation of legislation for the prosecution and punishment of terrorism and related activities.

To date, it has not been established that any groups of persons or companies linked to this type of activity are present in Nicaragua, but mention should be made of the measures designed to control illegal trafficking set out in the National Plan against Terrorism and Related Offences.

With respect to deceptive means such as recruiting individuals by making them believe that they are being recruited for other purposes (e.g. teaching) and fund-raising through front organizations, the National Police, through the Department of Economic Investigations, is developing operational measures to carry out systematic monitoring of the entire national financial system. The Interpol National Central Bureau is set up to coordinate rapidly, where appropriate, with the Department of Migration and Alien Affairs in running checks on foreigners entering the country. Surveillance, patrolling and intelligence work are also being used to deal with possible terrorist activities.

As mentioned above, the draft bill on counter-terrorism contains specific provisions on fund-raising in the context of terrorist activities. Moreover, we are more than willing to cooperate closely. The Superintendency of Banks and Other

Financial Institutions has sent the entities under its supervision circulars containing the relevant lists provided through the Embassy of the United States of America and the Ministry of Foreign Affairs.

In October 2001, Nicaragua signed the 1999 International Convention for the Suppression of the Financing of Terrorism. The Nicaraguan parliament (National Assembly) ratified that Convention by means of Legislative Decree No. 3287, which was published in Official Gazette No. 92 of 20 May 2002. In addition, by means of Decree No. 62-2002, published in Official Gazette No. 121 of 28 June 2002, the President of the Republic ratified the United Nations Convention against Transnational Organized Crime, which had been approved by the Nicaraguan National Assembly by means of Legislative Decree No. 3246, published in Official Gazette No. 38 of 25 February 2002.

Progress report in regard to instruments relating to terrorism

There have been changes in regard to the list of the 12 international instruments relating to terrorism. Nicaragua acceded to the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979, by means of Decree No. 33-2003, published in Official Gazette No. 65 of 2 April 2003, and its accession was approved by Legislative Decree No. 3578, published in Official Gazette No. 118 of 25 June 2003. Nicaragua is also a party to the International Convention for the Suppression of Terrorist Bombings, ratified by means of Decree No. 61-2002; the instrument of ratification was deposited on 17 January 2003. The United Nations Convention against Transnational Organized Crime was ratified on 14 December 2000; deposit of the instrument of ratification is in process.

Nicaragua is not yet a State party to the following international instruments relating to terrorism:

1. Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980;

2. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988; and

3. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.

However, the Government is stepping up the pace of consultations with a view to becoming a State party to these three international instruments as quickly as possible.

Central American Plan for Comprehensive Cooperation to Prevent and Combat Terrorism and Related Activities

Resolution 1373 (2001) states:

"*[The Security Council,]*

Acting under Chapter VII of the Charter of the United Nations,

3. Calls upon all States to:

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;"

The Government of Nicaragua is very interested in strengthening operational coordination mechanisms in order more effectively to combat crime and all other threats to democratic security, such as terrorism and related activities. To that end, it has undertaken to strengthen cooperation in preventing and combating all forms of criminal activities with regional or international implications and to prevent them from being planned, prepared and committed in Nicaraguan territory.

Nicaragua therefore participates in the Central American Plan for Comprehensive Cooperation to Prevent and Combat Terrorism and Related Activities and has taken a series of measures under the Plan, including:

- Improving and streamlining mechanisms for the exchange of information;
- Strengthening border, port and airport security;
- Making every effort to monitor and track migratory movements;
- Strengthening penal legislation by submitting prepared amendments to the penal code and a draft bill on counter-terrorism; both are under review by the National Assembly;
- Strongly condemning any existing link with international terrorism;
- Urging the legislature and the judiciary to put in place the necessary procedures for prosecuting and punishing such crimes against humanity by establishing adequate mechanisms to expedite that process; and
- Ensuring full enforcement of the relevant regional and international instruments.

Our security system should be registering a notable advance: we now have work plans based on the Framework Treaty on Democratic Security in Central America, including the National Plan against Terrorism and Related Offences, developed pursuant to the Central American Plan.

Since 2001, Nicaragua has had a National Plan against Terrorism and Related Offences; its primary objective is the adoption of adequate measures at the national level aimed at strengthening inter-agency cooperation in order to take effective action to prevent, combat and eliminate terrorism.

Our National Plan against Terrorism and Related Offences includes various guidelines and strategic actions which demonstrate the Government's determination to combat terrorism, with a focus on the following areas:

- Strengthening border, port and airport security;
- Strengthening penal legislation in order to authorize the freezing of funds derived from terrorist groups;
- Doing everything possible to monitor migratory movements in order to prevent persons with links to terrorism from entering the country; and

- Ensuring inter-agency cooperation in the exchange of pertinent information to prevent and combat terrorism.

The National Plan has its legislative basis in Executive Decree No. 108-2001 of 26 November 2001, which established the National Committee responsible for advising and supporting the Nicaraguan Government on all counter-terrorism matters, including the adoption of national and regional measures, the incorporation of relevant international instruments in domestic legislation and dissemination of their contents.

In addition, all the agencies involved in combating this scourge have implemented a timely, effective system for communicating with other Central American agencies and police and security forces. The National Police is also a member of the Association of Chiefs of Police of Central America, which operates under the Framework Treaty on Democratic Security in Central America and the Central American Integration System. These entities form a regional legal community to protect, supervise and promote human rights and ensure legal security.

The Department of Migration and Alien Affairs maintains an exchange of general and specific information on migratory movements, thereby facilitating analysis. Through the exchange of up-to-date information with national security and intelligence services, it also maintains a record of entries into and exits from Nicaragua by citizens of nationalities listed as restricted or of interest from the standpoint of combating transnational crime.

Assistance and guidance

The Government of Nicaragua is interested in receiving assistance and training in the preparation of draft legislation relating to the prevention and suppression of terrorism and to the passage of such bills. It would also welcome advice and assistance from the Global Programme against Terrorism of the United Nations Office on Drugs and Crime, specifically in the review of domestic legislation and on the drafting of laws incorporating international instruments relating to the suppression and prevention of terrorism in its domestic legal system.

It would also be very helpful to receive technical assistance in drafting legislation on combating money-laundering and the financing of terrorism and in reviewing bills already drafted for compliance with Security Council resolution 1373 (2001) and the provisions of the International Convention for the Suppression of the Financing of Terrorism.

Nicaragua also urgently requires training in the form of workshops, courses or seminars in the following areas:

- Intelligence;
- Air Force;
- Navy;
- Army: special operations and military border units;
- Crisis management;
- Types of links between terrorism and organized crime;

- Methods used by international terrorism to launder assets and transfer funds;
- Use or involvement of licit organizations in support of international terrorism;
- Use of social communication media by international terrorism;
- Training and equipping of units specialized in combating terrorism.

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Letter dated 2 January 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 September 2002 (S/2002/1006). The Counter-Terrorism Committee has received the attached supplementary report from Maldives, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 26 December 2003 from the Permanent Mission of Maldives to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Representative of the Republic of Maldives to the United Nations presents his compliments to the Chairman of the Counter-Terrorism Committee and further to the Mission's note, dated 20 January 2003, has the honour to submit herewith the second report of the Republic of Maldives, in accordance with Security Council resolution 1373 (2001) (see enclosure).

Enclosure*

SECOND REPORT SUBMITTED BY THE REPUBLIC OF MALDIVES IN ACCORDANCE WITH SECURITY COUNCIL RESOLUTION 1373 (2001)

* Annexes are on file with the secretariat and are available for consultation.

Revised Report of the Maldives under Security Council Resolution 1373

The Maldives submitted its first report in April 2002 pursuant to paragraph six of the Security Council Resolution 1373 (2001). This revised report attempts to provide responses to the specific details sought by the Counter Terrorism Committee in its communication under reference S/AC.40/2002/MS/OC.144 dated 30 August 2002. These details are provided in a manner that corresponds to the questions raised in the said communication. The Maldives has consistently supported all international measures towards the elimination of terrorism, having experienced the terror and tragic consequences of a terrorist attack in 1988. The Maldives, since then, has reiterated at the General Assembly every year the need for the enhancement of international cooperation to combat and eliminate terrorism. Following the tragic events of September 11, the Government of Maldives strongly condemned the terrorist attacks in the United States, and expressed solidarity with the American people, and voiced its readiness to cooperate fully with the international community to combat terrorism.

Following are the responses to the specific questions arising from the operative paragraphs of Security Council resolution 1373. Copies of unofficial translations of the Maldivian laws referred to in the responses are attached to this revised report.

Operative Paragraph: 1 (a)

What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1(b) to (d)?

Law on Prevention of Terrorism in the Maldives (Law No. 10/90) defines terrorist offences and acts of terrorism. Section 3 of the said law regards the provision of funds, material or any other form of assistance towards planning and execution of any of the activities specified in the law. Apart from Law No 10/90, Law on Narcotics Drugs and Psychotropic Substances (Law No. 17/77) and Law on the Prevention and Prohibition of Corruption (Law No. 2/2000) subscribe to the legislative framework against financing of terrorist acts and money laundering. Section 6 of Law No. 17/77 in particular prohibits the receiving, keeping and use of goods or money obtained, or with reason to believe to have been obtained through indulgence in an act prohibited under the Law. The same section prohibits the laundering of proceeds from offences under the said Law.

Operative Paragraph: 1 (b)

What are the offences and penalties in your country with respect to the activities listed in this sub-paragraph?

Section 2 of Law No. 10/90 defines terrorist acts. They include causing and attempting to cause death and bodily harm; instilling fear in a person or the public; kidnapping, hostage taking, hijacking and attempts thereof; the importation, manufacture, possession, use, attempted use, sale or distribution of fire arms, ammunition or any type of bombs or explosives without the express permission of the Government; and dealing in firearms and related items; and setting on fire or causing damage to property.

Section 3 of the said Law regards the provision of funds or any other form of assistance towards committing or planning of any of the activities specified in the Law as acts of terrorism.

In order to bring the perpetrators of terrorist acts to justice, the Law on Terrorism (Law No.10/90) prescribes the following sentences to perpetrators of terrorist acts.

1. Those found guilty of terrorist acts or aiding and abetting of such acts that result in death, may be sentenced to death or life imprisonment of banishment for life.

2. Those found guilty of terrorist acts or aiding and abetting such acts that do not result in any death may be sentenced to between 10 and 15 years imprisonment or banishment.

3. Those who withhold information on any terrorist act may be sentenced to between 5 and 10 years imprisonment or banishment.

The Maldives regards terrorist acts as serious offences. As such, the punishment prescribed under the national laws reflects this seriousness.

Operative Paragraph: 1 (c)
What legislation and procedures exist for freezing accounts and assets at banks and financial institutions?

The Maldives Monetary Authority (MMA) as the regulatory authority for activities in the financial sector under the Maldives Monetary Authority Act (1981), monitors the compliance of the financial institutions with relevant laws and regulations in effect in the Maldives. The MMA issues directives to the banks to be vigilant in "Knowing Your Customers." It also issues Freeze Orders based on the consolidated list under resolution 1373. These Freeze Orders and other directives are binding on all commercial banks and other financial institutions in the Maldives. To date, there have been no known cases of unusual financial transactions through the banking system in the Maldives.

Operative Paragraph: 1 (d)
What measures exist to prohibit the activities listed in this sub-paragraph?

The Maldives has no legislation for regulating informal banking networks. There does not exist an environment for Hawala. The country has an expatriate population close to 25,000, but the expatriates use the normal banking channels for transfer of funds. The Maldives Monetary Authority monitors transfer of large sums of money by requiring banks to notify it in writing of such transfers.

As the regulatory authority for activities in the financial sector under the Maldives Monetary Authority Act (1981), MMA requires the banks to report on a daily basis any unusual movement of funds through the banking system especially in line with surveillance activities following the events of September 11, 2001.

The laws and regulations that help to ensure supervision of the financial sector are the Maldives Monetary Authority Act (1981), Regulations for Banks and Financial Institutions, Regulations for Finance Leasing Companies and Finance Leasing Transactions, MMA's Circulars and Directives to the commercial banks and other financial Institutions. These provide authority to the MMA to gain unobstructed access to records of financial institutions, investigate unusual transactions and to take action against suspected criminal activities in the area.

Operative Paragraph: 2 (a)
What legislation or other measures are in place to give effect to this sub-paragraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

Law on the Prevention of Terrorism in the Maldives (Law No. 10/90) provides the legislative framework to deal with acts of terrorism. Recruitment to terrorist groups will be dealt with under this Law.

Law No. 4/75 governs the importation, production and handling of arms, ammunitions and explosives and is intended to prevent any arms and ammunitions from being shipped into unauthorized hands. The Ministry of Defence and National Security is tasked with the enforcement of the law. The law prohibits any person from acquiring firearms, possession of guns or importing weapons into the Maldives without the authorization of the Ministry of Defence and National Security.

Operative Paragraph: 2 (b)
What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning, mechanisms exist to allow exchange of information with other states?

The National Security Service (NSS) provides early signals to the South Asian Association for Regional Cooperation (SAARC) Terrorist Monitoring Desk (STOMD) in Colombo which has been set up to collate, analyse and disseminate information on terrorist incidents, tactics, strategies and methods in an effort to prevent the movement of terrorists or terrorist groups by effectively controlling them at the borders. The NSS also works with the INTERPOL to share information on the movement of terrorists and others engaging in criminal activities.

Furthermore, the Department of Immigration and Emigration closely monitors the entry and exit of persons to prevent listed/wanted people from entering to, or transiting in the Maldives.

The new Customs procedures monitor the movement of cargo consignments to intercept illegal consignments or those that may be destined to terrorist groups.

Operative Paragraph: 2 (c)
What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this sub-paragraph?

The Maldives relies on information from the Interpol and other law enforcing agencies to deny entry into the Maldives by persons who are listed as wanted terrorists or suspected of being terrorists. No such cases have been found in the Maldives as yet.

Operative Paragraph: 2 (d)
What legislation or procedures exist to prevent terrorists acting from your territory against other states or citizens?

The criminalisation of hijacking and attempted hijacking as terrorist acts under Section 2 (a) of Law No. 10/90 and the requirement of express permission of the Government, under Section 2 (c) of the Act, for importation, manufacture, possession, sale or distribution of firearms, ammunition or any type of bombs or explosives, together with the Maldives Monetary Authority Act (1981) do prevent those who finance, plan, facilitate or commit terrorist acts from using the Maldives as a base against other States and/or their citizens. The criminalisation of the use of funds and/or materials, or any other forms of assistance towards the commission or planning of these terrorist acts (Section 3 of the Act) and the cancellation of registrations or licences of those corporate or associate bodies registered in the Maldives if found to have contributed towards the commission of such acts (Section 4 of the Act) are mechanisms that help prevent terrorist acts being committed from the Maldives.

Operative Paragraph: 2 (e)
What steps have been taken to establish terrorist acts as serious criminal offences and to endure that the punishment reflects the seriousness of such terrorist acts?

Law on Prevention of Terrorism in the Maldives does criminalize acts of terrorism including causing and attempting to cause death and bodily harm; instilling fear among the public, kidnapping, hostage taking, hijacking and attempts thereof; the importation, manufacture, possession, use attempted use, sale or distributions of fire arms, ammunitions or any type of bombs or explosives related items without the express authorization of the government; and setting on fire or causing damage to any property.

Persons who commit acts of terrorism, and those who participate in the commission or planning of such an act in the Maldives, which result in the death of any person, are punishable by death or, life imprisonment or banishment for life. The punishment for aiding and abetting the commission of the crime or concealment of any such information is imprisonment or banishment for a term not less than ten years but not exceeding fifteen years

(Section 6 (a)). Whoever commits an act of terrorism, and participates in the commission or planning of such an act in the Maldives, which does not involve the death of any person shall be punishable by imprisonment or banishment for a term not less than ten years but not exceeding fifteen years. The sentence for aiding and abetting the commission of the crime or concealment of any such information is imprisonment or banishment for a term not less than three years but not exceeding seven years (Section 6 (b)). Section 6 (c) of the Act gives the discretion to the court to order a specified period of the term of imprisonment to be served with hard labour.

Operative Paragraph: 2 (f)
What procedures and mechanisms are in place to assist other states?

The Maldives provides information to the SAARC Terrorism Offences Monitoring Desk (STOMD) with a view to assist other member countries in their criminal investigations or criminal proceedings relating to the financing or support of terrorist acts. Besides this, there is intelligence sharing with friendly countries on a bilateral basis, and through the INTERPOL in the case of other countries.

Operative Paragraph: 2 (g)
How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery etc.?

The National Security Service (NSS) and other law enforcement agencies such as the Maldives Customs Service, the Department of Immigration and Emigration, and the Airport Security, work jointly to deny terrorists entry into the Maldives. The authorities depend on tip-offs from the Interpol and law enforcement agencies of other states. In addition, there is enhanced screening processes for passengers, luggage and cargo at ports and airports. Following 9/11, the Customs procedures have been made more stringent. The Department of Immigration and Emigration has enhanced measures to monitor closely the entry and exit of persons to prevent listed/wanted people from entering or transiting the Maldives. The NSS, as the principal agency responsible for law enforcement activities, has enhanced security measures at air and sea ports and has improved its coordination with the Customs and Immigration authorities.

Maldivian travel documents are issued on the submission of a copy of the national identity card and the birth certificate. The person receiving a travel document is required to present himself/herself at the Department of Immigration and Emigration in person for the collection of the travel document. Those who are too ill to present themselves at the Department of Immigration and Emigration, are required to submit in writing to the Department, identifying a person who would collect the document on his/her behalf. Whoever collects the document on behalf of someone else, is required to present his/her national identity card and a letter of authorisation. Those reporting loss of a travel document and requesting for a new travel document has to submit a police report on the loss of the travel document. To prevent forgery, the security features in the Maldivian passports have been increased and are now machine readable.

Operative Paragraph: 3 (a)
What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this sub-paragraph?

A LAN has been established between the Male' International Airport and the Department of Immigration and Emigration, which provides instant access to previous records if any suspicious cases appear at the entry point. Similarly, contacts with the Interpol and STOMD have been strengthened.

Operative Paragraph: 3 (b)
What steps have been taken to exchange information and cooperate in the areas indicated in this sub-paragraph?

Law enforcement agencies have been instructed to share information with the law enforcement agencies of other countries to prevent commission of terrorist acts and in case of commission of a terrorist act to cooperate with them to arrest and bring those responsible to justice. The Maldives, through SAARC Terrorism Offences Monitoring Desk (STOMD) and SAARC Drug Offences Monitoring Desk (SDOMD) share information with other countries in the South Asia region on terrorist incidents, tactics, strategies and methods.

Operative Paragraph: 3 (c)
What steps have been taken to cooperate in the areas indicated in this sub-paragraph?

There are no bilateral and multilateral agreements, but the Government of Maldives remains open to working with other countries and institutions.

Operative Paragraph: 3 (d)
What are your government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this sub-paragraph?

The Maldives is already party to the following 7 of the 12 global conventions on terrorism. They are:

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 November 1973.

- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

- Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963.

- Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988.

- Convention on the Marketing of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991.

- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague 16 December 1970.

- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.

In addition, the Maldives is also party to the SAARC Regional Convention on Suppression of Terrorism signed in 1987. The Government of Maldives is in the process of studying the remaining conventions.

The Government has just completed studying the International Convention for the Suppression of the Financing of Terrorism adopted by the United Nations General Assembly on 9 December 1999. The Government hopes to ratify the Convention in the near future.

Operative Paragraph: 3 (e)
Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this sub-paragraph?

The Ministry of Finance and Treasury of the Republic of Maldives is alerted to additions to the consolidated list under resolution 1373, who conveys the information to the Maldives Monetary Authority (the central bank). MMA instructs all commercial banks and other financial institutions to check their records and freeze any assets/accounts held by those added to the list.

Operative Paragraph: 3 (f)
What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status?

The Maldives has no legislation that governs asylum seeking and granting of refugee status. However, the Maldives would comply with its international and bilateral obligations in denying asylum and residency to terrorists or members belonging to or associated with terrorist groups.

Operative Paragraph: 3 (g)
What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognised as grounds for refusing requests for the extradition of alleged terrorists.

The Maldives does not accept any refugees, and as such the issue of abusing refugee status does not arise.

*Operative Paragraph: 4 – **Assistance***

The Government of Maldives is in the process of drawing up an Anti-Money Laundering Law and establishing a Financial Intelligence Unit (FIU). The MMA, as the coordinating authority, is seeking technical assistance from the US Government and the World Bank in these fields.

23 December 2003